TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 652.

FRANKLIN SUGAR REFINING COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED MARCH 30, 1906.

(20,154.)

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1 October Session, 1904.

John G. Johnson. 81.

In the Matter of Certain Merchandise Imported by THE FRANKLIN SUGAR REFINING COMPANY.

1905.
January 27. Petition of importers filed.
Bond for costs in sum of Fifty Dollars ($50.00) filed.
Order of Court directing Board of U. S. General Appraisers to return record, &c.
March 7. Return of Record, Evidence and Facts by Board of U. S. General Appraisers, filed.
June 6. Argued.
1906.
March 8. Opinion affirming decision of Board of U. S. General Appraisers filed.
" 8. Decree.
" 16. Specifications of error filed.
Petition and order allowing appeal filed.
" 23. Bond sur appeal approved and filed.
Citation allowed and issued.
" 27. Citation returned service accepted.

2 United States Circuit Court, Eastern District of Pennsylvania.

In the Matter of Certain Merchandise Imported by THE FRANKLIN SUGAR REFINING COMPANY.

To the Honorable United States Circuit Court for the Eastern District of Pennsylvania:

The Petition of The Franklin Sugar Refining Company respectfully represents

That petitioners duly imported and entered at the port of Philadelphia the goods described in the schedule annexed, and that the Collector of Customs of the United States for the District of Philadelphia thereupon levied certain duties in excess of the rate and amount required by law, and that upon all goods so entered for consumption said excessive duties have been duly paid.

That within the time required by law protest in writing was duly made and served in behalf of your petitioners, giving notice to said Collector distinctly and specifically, and in respect to each entry or payment the reasons for the objections to his decision; and thereafter, and within the past thirty days from the date of this petition, a decision upon said notice or protest was made by the Board of General Appraisers, sitting at the port of New York, or by a majority of them, as by the statute provided, adverse to the claims of your petitioners.

That your petitioners are dissatisfied with said decision, and the following is a statement of the errors of law and fact complained of, viz:

3 Petitioner on September 29, 1903, imported into the Port of Philadelphia certain sugars, the product of the Republic of Cuba, and entered the same in Bonded Warehouse. Permits for the removal for consumption of all of said sugars for which claim is now made from Bonded Warehouse were given petitioner before December 17, 1903. All of said sugars for which claim is now made were removed for consumption from Bonded Warehouse before December 17, 1903, except

1250 bags of sugar which were removed therefrom on December 28, 1903, and

3279 bags of sugar and 67 bags of sweepings which were removed therfrom on December 29, 1903.

The convention with the Republic of Cuba, which was signed December 11, 1902, and the ratification of which were exchanged March 31, 1903, provided for a reduction on sugars, the product of Cuba, imported into the United States, of twenty per cent from the rates of duty fixed by the Tariff Act of July 24, 1897; and by the terms of said Convention, it went into effect ten days after the exchange of ratifications.

Said Convention farther provided that "this Convention shall not take effect until the same shall have been approved by Congress." The Act of Congress entitled "An Act to carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of December in the year nineteen hundred and two," was approved December 17th, 1903, and provided that the rates of duty specified in said convention should be in force "on the tenth day after exchange of ratifications of such convention * * * and so long as said convention shall remain in force."

The Collector imposed duties on all said sugars at the full rate imposed by the Tariff Act of July 24, 1897. The Petitioner protested claiming (1) that all of said sugars having been imported into the United States more than ten days after the exchange of ratifications of said Convention, it was entitled to a reduction of twenty per cent on the rates of duty thereon, and (2) that in any event it was entitled to such reduction as to the bags of sugar not actually removed as aforesaid from Bonded Warehouse until after December 27, 1903. The Board of General Appraisers sustained the Collector.

The errors of law complained of are (1) the imposition on all said sugars of the full rate of duty imposed by the Tariff Act of July 24, 1897, without the reductions of twenty per cent thereof provided in said Convention of December 11, 1902, and (2) the imposition of said duties on those sugars not actually removed from Bonded Warehouse until after December 27, 1903.

4 That the following is a schedule of the importations embraced in this petition, viz.:

	Description of merchandise.	Name of vessel.	Date of entry.	Date of protest.	Date of decision.	Amount claimed to be an excess of legal rate.
			1903.	1904. 139,779B	1904.	
1	Sugar from Cuba.	Carisbrook ..	Sept. 29	June 3 139,780B	Dec. 30	$21895 41
2	Sugar from Cuba.	Thornley	Sept. 29	June 18 129,306B	Dec. 30	10185 24
3	Sugar from Cuba.	Carisbrook ..	Sept. 29	June 3	Dec. 30	4870 16 (Estimated)
4	(Being that part of the cargo					
5	embraced in the first lot above					
6	mentioned which were not re-					
7	moved from Bonded Warehouse					
8	until after Dec. 27, 1903.)					
9						
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Wherefore your petitioners pray that the said Circuit Court review the questions of law and fact involved in the decision of the said Board of Appraisers, heretofore made in each of the above matters as to the classification and rate of duty assessed upon said merchandise, and for that purpose pray that an order may be entered requiring the said Board of Appraisers to return to said Circuit Court the record and evidence taken by them, together with a certified statement of the facts involved in each of the above matters and their decisions thereon.

And your petitioners further pray for such additional orders and relief under the Statutes of the United States in such cases made and provided, as they may in the judgment of the Court be entitled to.

Dated Philadelphia, January 20th, 1905.

FRANKLIN SUGAR REFINING COMPANY,
Petitioner.

By JOHN G. JOHNSON, *Attorney.*
Per J. W. BAYARD.

[Endorsed:] #81. Oct. Term, 1904. U. S. Circuit Court, Eastern District of Pennsylvania. In the Matter of Certain Merchandise Imported by Franklin Sugar Refining Company. Petition of Importers. Due service of a copy hereof is hereby admitted this 27th day of Jan'y, 1905. C. Wesley Thomas, Collector of Customs, Per L. Y. Martin, Special Dy. Collector. John G. Johnson, Attorney for Petitioner. Filed Jan. 27, 1905. Samuel Bell, Clerk.

5 *Bond for Costs.*

Know all men by these presents, That Edwin A. Zeller, Jr., am held and firmly bound unto the United States of America, in the sum of fifty dollars, to be paid to the said United States of America, for the payment of which, well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with my seal, and dated the 20th day of January A. D. 1905.

Whereas, Franklin Sugar Refining Company, have applied to the Circuit Court of the United States, for the Eastern District of Pennsylvania, for a review of the questions of law and fact involved in certain decisions of the Board of General Appraisers, referred to in the petition of said petitioners, dated the 20th day of January, A. D. 1905.

Now, Therefore, the condition of this obligation is such, that if the above named Franklin Sugar Refining Company shall prosecute said proceeding with effect, and pay all damages and cost which shall be awarded against them in this Court if they shall fail to make their said proceeding good, then this obligation shall be void, otherwise the same shall be, and remain, in full force and effect.

(Signed) EDWIN A. ZELLER, JR. [SEAL.]

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Edwin A. Zeller, Jr. being duly sworn, deposes and says that he is worth the sum of one hundred dollars over and above all his just debts and liabilities.

(Signed) EDWIN A. ZELLER, JR.

Sworn to before me, and I also further certify that the foregoing bond was sealed, delivered and taken and acknowledged before me, all on this 20 day of Jan'y A. D. 1905.

(Signed) THOMAS S. GATES. [SEAL.]
Notary Public.

Commission expires Jan. 2, 1909.

Endorsed: No. 81. Oct. 1904. U. S. Circuit Court. Eastern District of Pennsylvania. In the Matter of certain merchandise imported by Franklin Sugar Refining Co. Bond for Costs. Filed Jan. 27, 1905. Samuel Bell, Clerk. Frank P. Prichard, Attorney for Petitioner.

6 United States Circuit Court, Eastern District of Pennsylvania.

In the Matter of Certain Merchandise Imported by FRANKLIN SUGAR REFINING COMPANY.

Before Holland, J.

Upon reading and filing the petition of Franklin Sugar Refining Company in this case dated the 20th day of January, A. D. 1905, and upon motion of John G. Johnson, attorney for the petitioner,

Ordered, that the Board of United States Appraisers, sitting at the port of New York return to this Court the record and the evidence taken by them, together with a certified statement of the facts involved and their decisions thereon, as to the dutiable classifications of the following imported merchandise, embraced in said petition, viz.:

Description of merchandise.	Name of vessel.	Date of entry.	Date of protest.	Date of decision.	Amount claimed to be an excess of legal rate.
		1903.	1904. 139,779B	1904.	
Sugar from Cuba . . .	Carisbrook	Sept. 29	June 3 139,780B	Dec. 30	$21895 41
Sugar from Cuba	Thornley . . .	Sept. 29	June 18 129,306B	Dec. 30	10185.24
Sugar from Cuba	Carisbrook . .	Sept. 29	June 3	Dec. 30	1870.16 (Estimated)
(Being that part of the cargo embraced in the first lot above mentioned which were not removed from Bonded Warehouse until after Dec. 27, 1903.)					

Dated 27th day of January A. D. 1905.
By the Court.
Attest:
(S'd) HENRY B. ROBB,
Deputy Clerk.

7 No. 81, Oct. 1904. U. S. Circuit Court, Eastern District of Pennsylvania. In the matter of certain Merchandise imported by Franklin Sugar Refining Company. Order upon the Board of U. S. General Appraisers. Due service of a copy hereof is hereby admitted this — day of ——, 1905. Filed Jan. 27, 1905. Samuel Bell, Clerk. John G. Johnson, Attorney for Petitioner.

8 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

In the Matter of—

FRANKLIN SUGAR REFINING COMPANY,
versus
UNITED STATES.

Being an application for review of a decision of the Board of United States General Appraisers.

Suit No. 1693.

(81 Oct., 1904.)

Return of the Board of United States General Appraisers to the Order of J. B. Holland, United States District Judge. Dated New York, Mar. 6, 1905.

The Board of United States General Appraisers, sitting at New York, in response to the order of the Court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

9 FRANKLIN SUGAR REFINING CO.
v.
U. S.

Suit 1693.

This return comprises:

(1) The importers' protest 129306, marked Exhibit A.

(2) The letter of the collector of customs, transmitting said protest to the Board, marked Exhibit B.

(3) Copy of letter addressed by importers to the Secretary of the Treasury, June 8, 1904, marked Exhibit C.

(4) Copy of letter addressed by the collector of Customs to the secretary, June 16, 1904, marked Exhibit D.

(5) Copy of the Response of the secretary to said Exhibit D, marked Exhibit E.

(6) Copy of letter addressed by the importer to the secretary of the Treasury, July 1, 1904, marked Exhibit F.

(7) Copy of letter addressed by the Collector of customs to the Secretary of the Treasury, July 11, 1904, marked Exhibit G.

(8) Copy of response of the Secretary to said Exhibit G. marked Exhibit H.

(9) The importers' protests 139779 and 139780, marked respectively Exhibits I and J.

(10) The letter of the collector of customs transmitting said protests to the Board, marked Exhibit K.

(11) A transcript of the testimony taken by the Board, marked Exhibit L.

10 (12) The exhibit referred to in said testimony.

(13) A copy of the decision of the Board, known as G. A. 5885 (T. D. 25914), marked Exhibit M.

11 EXHIBIT A. S. 1693.

Franklin Granulated Sugar.

The Franklin Sugar Refining Co., Office, Stock Exchange Place, Philadelphia.
(Lock Box 1630)
Central Station.
Collector's Office, received June 4, 1904. No. 24367. Custom House, Philadelphia.

JUNE 3, 1904.

Hon. C. Wesley Thomas, Collector of Customs, Port of Philadelphia.

SIR: We hereby protest against your decision as to the rate and amount of duty exacted by you on 4529 bags Centrifugal Sugar and 67 bags sugar sweepings, the product of Cuba, part of an importation of 23,359 bags sugar, the product of the soil and industry of the Republic of Cuba per s/s "Carisbrook" from Havana, Cardenas, and Mantanzas, Cuba, duly entered in Bonded Warehouse September 29, 1903, W. H. Entry 15466, and withdrawn for consumption subsequent to the 10th day after the exchange of ratifications of a Convention between the United States and the Republic of Cuba. Liquidated May 25, 1904.

Said 4529 bags Cuban Centrifugal Sugar and Sweepings were not removed from Bonded Warehouse until after December 28, 1903, and these sugars were certified by United States Storekeeper as being on hand in Bonded Warehouse December 28, 1903 at noon
12 and composed of marks and quantities as follows:

Bond #2606 Ex. "Carisbrook"—

Armonia A	509	bags
Flora B	284	"
Truimfo C	933	"
Saratoga D	811	"
Sta Catalina E	585	"
Carmen H	305	"
Nueva Paz J	159	"
St. Domingo K	25	"
Union M	410	"
St. Filomena O	83	"
Australia S	28	"
Aguada P	158	"
Alava I	239	"
	4529	bags Centrifugal Sugar.
	67	" Sugar Sweepings.

The said 4529 bags of Cuban Centrifugal Sugar and 67 bags sweepings having been removed from Bonded Warehouse subsequent to 12.01 A. M., December 27, 1903, on which date the Honorable, The Secretary of the Treasury decided the Convention between the United States and the Republic of Cuba, became operative, T. D. 24836, and by authority of an Act of Congress approved December 15, 1902, T. D. 24109, we respectfully claim that the said sugars being in Bonded Warehouse and in Customs custody, were subject to the same rate of duty as sugars the product of Cuba imported at the time of their removal from Bonded Warehouse *i. e.*, subsequent to December 27, 1903, viz: a reduction of 20 per cent. from the rates of duty provided by the Tariff Act of the United States, approved July 24, 1897, or as may be provided by any Tariff Law of the United States subsequently enacted.

13 We respectfully refer to Treasury Decision # 22847 March 1, 1901, and the decision therein quoted, viz: T. D. 1653:

"Merchandise in Bonded Warehouse, on which duties have been paid, and a permit of delivery issued, is, until actually delivered from warehouse, considered as still being in the custody of the officers of the customs, so as to entitle it to the benefit of the provision of Section 8, act of March 28, 1854, as extended by section 13, act of March 3, 1865."

We respectfully request a reliquidation of this entry and a refund of duty on the 4529 bags Cuban Centrifugal Sugar and 67 Bags sugar sweepings exacted in excess.

Yours respectfully,

THE FRANKLIN SUGAR REFINING CO.
(Signed) W. W. FRAZIER, JR., *Sec'y.*

Endorsed: Protest, Jun- 4, 1904. Philadelphia, Pa. Protest (Col.) No. 24367. Entry No. 15466. Name Franklin Sugar Ref. Co. Subject Sugar product of Cuba. Vessel, Carisbrook. Dt. Entry. Sept. 29, 1903. Dt. Liq. May 25, 1904. Duties paid W. H. 129306.

14 CUSTOM HOUSE,
PORT OF PHILADELPHIA, *July* 26, 1904.

I submit herewith the protest described below with the accompanying invoice and entry against my assessment of duty at the rates provided in the act of July 24, 1897, on certain sugar, product of Cuba, imported and duty paid thereon prior to Dec. 27, 1903, but not actually removed from bonded W. H. until after that date, claimed to be dutiable at the reciprocity rates provided in T. D. 24836 returned by the Appraiser as raw sugar and assessed with duty under par. 209 Act of July 24, 1896, in accordance with Dept.'s rulings of T. D. 24,855 and 24924.

The requirements of Section 14, Act of June 10, 1890, have been complied with by the protester, Franklin Sugar Refining Company,

Copy of correspondence between the Department, The Franklin Sugar Regning Co. and this office enclosed.

Respectfully,

(Signed) L. G. MARTIN,
A. W. D.,
Special Deputy Collector of Customs.

Exhibit B. S. 1693.

To the Board of U. S. General Appraisers, New York.

15

No.	Name of importer.	Vessel.	Date of entry.
24367	Franklin Sugar Refining Co.....	Carisbrook.	Sep. 29, 1903.

In addition to the entry and invoice we enclose:
Five (5) withdrawal- from W. H. entries.
Five (5) delivery permits.
Twenty-six (26) daily returns of Storekeepers.

Note.—In transmitting protests, the requirements of Articles 1464, 1465, and 1466, Customs Regulations of 1899, should be strictly complied with. The Number of inclosures should always be stated, and, in counting the same, each separate, detached paper, or group of papers, (fastened together by pins, mucilage, or otherwise), should be counted as one.

Number of inclosures 40.

Endorsed: 29306. Cat. No. 182. Philadelphia, July 26, 1904. C. Wesley Thomas, Collector of Customs. Transmits Protest of Franklin Sugar Refining Co. Admin. Cuban sugar, Under the treaty. Enclosures No. 40. Received by Board of U. S. General Appraisers, Jul- 27, 1904.

16 EXHIBIT C. S. 1693.

Franklin Granulated Sugar.

The Franklin Sugar Refining Co., Office Stock Exchange Place.

(Lock Box 1630.)
Central Station.

PHILADELPHIA, *June* 8th, 1904.

The Honorable The Secretary of the Treasury, Washington, D. C.

SIR: We respectfully request that authority be given the Collector of Customs at Philadelphia to reliquidate an entry of sugar the product of Cuba, imported per s/s "Carisbrook," W. H. Entry

15466, September 29, 1903, with an allowance of 20% of the rates of duty provided by Tariff Act of July 24, 1897, on 4529 bags Centrifugal Sugar and 67 bags of sugar sweepings, part of said importation removed from Bonded Warehouse subsequent to December 28, 1903.

Said sugars were in Customs custody in bonded warehouse December 28, 1903, at noon and were certified by U. S. Storekeeper to be of the following marks:

Armonia A	509	bags	
Flora B	284	"	
Truimfo C	933	"	
Saratoga D	811	"	
Sta Catalina E	585	"	
Carmen H	305	"	
Nueva Paz J	159	"	
St. Domingo K	25	"	
Union M	410	"	
Sta. Filomena O	83	"	
	4104	"	(Carried forward)
17	4104	bags	(Brought forward)
Australia S	28	"	
Aguada P	158	"	
Alava I	239	"	
	4529	"	Centrifugal Sugar.
	67	"	sugar sweeings.

The estimated duty on said sugars was deposited with Collector of Customs as per withdrawal entry of October 10, 1903, but these 4529 bags Cuba Centrifugal Sugars and Swepings were not removed from Bonded Warehouse until after the treaty of reciprocity between the United States and Republic of Cuba became operative—T. D. 24836. It has been held that it is the intent of Congress in Section 20 Act of June 10, 1890, that Merchandise withdrawn from Bonded Warehouse should be subject to the same rate of duty as imposed by law upon like merchandise imported at time of withdrawal—Mosle *ex.* Bidwell C. C. A. 2nd Circuit, New York, T. D. 25276, also Act of Congress approved December 15, 1902, T. D. 24109. In conformity with the Act of Congress the Department held in T. D. 24855, December 29, 1903, Products of Cuba previously imported remaining in bond or unentered entitled to benefit of reciprocity treaty; also in T. D. 24924:

"Merchandise the product of the soil or industry of Cuba, imported at original or exterior ports and entered in bond for transportation to secondary or interior ports prior to the taking effect of the treaty, and *received* and entered for consumption at the latter ports after the taking effect of the convention, is entitled to the benefits thereof."

The said 4529 bags Cuba Centrifugal Sugar and Sweepings imported per "Carisbrook" were not *received* from Bonded Warehouse

and did not enter into consumption until after December
18 28, 1903, and were in Customs custody December 27, 1903, 12.01 A. M. when the treaty of reciprocity became operative. We respectfully refer to Treasury Decision # 22847 March 1, 1901, and the decision therein quoted viz: T. D. 1653:

"Merchandise in Bonded Warehouse on which duties have been paid and a permit for delivery issued is, until actually delivered from Warehouse, considered as still being in the custody of the officers of the Customs."

The 4529 bags Cuba Centrifugal Sugar and sweepings should be liquidated with an allowance 20% of the rates of duty provided by Tariff Act of July 24, 1897, because:

The sugars were in customs custody in Bonded Warehouse and they were not received nor did they enter into consumption until after the Treaty with Cuba became effective. They entered into consumption at the same time and were obliged to compete with sugars of like product which were assessed with 20% less duty.

Due authority for reliquidation is respectfully requested.

Very respectfully,

THE FRANKLIN SUGAR REFINING CO.,

(Signed) E. A. ZELLER, JR.

Copy.

19 EXHIBIT D. S. 1693.

Copy.

UNITED STATES CUSTOMS SERVICE,
PORT OF PHILADELPHIA, *June* 16, 1904.

The Honorable The Secretary of the Treasury, Washington, D. C.

SIR: I have the honor to acknowledge the receipt of Department's endorsement (J. L. G.) of the 10th instant for report and return upon the request of the 8th idem of the Franklin Sugar Refining Co., that the Collector of Customs at this port be authorized to reliquidate their entry W. H. 15466, ex S. S. "Carisbrook" September 29, 1903, with an allowance of 20% in the rates of duty on 4,529 bags of Cuban sugar and 67 bags of Cuban sugar sweepings specified thereon under the provisions of the Reciprocity Convention between the United States and Cuba (T. D. 24836) said sugar not having been removed from bonded warehouse until December 28th and 29th, 1903.

In reply I beg leave to report that the Franklin Sugar Refining Co., imported on September 29, 1903, from Cuba a cargo of Cuban sugar and warehoused it in the Spreckles bonded warehouse. Between September 29th and October 10th, inclusive, of that year withdrawal entries were made for the entire cargo and duties at the regular rates paid thereon. The delivery permits were lodged with the storekeeper at the same time.

20 All the cargo, excepting 4,529 bags and 67 bags of sweepings, was actually delivered to the importers prior to 12.01

A. M., December 27, 1903, the date when the Cuban Reciprocity Convention went into effect. Of the sugar remaining in warehouse on that morning 1250 bags were delivered to the importer by the storekeeper on December 28, 1903, and the remainder, 3,279 bags and 67 bags of sweepings, on the following day, December 29th.

The entry was liquidated on May 25, 1904, and duty assessed at the regular rates on the entire cargo, no allowance being made on the part thereof remaining in warehouse after the Cuban Reciprocity Convention went into effect. This action was based upon the following rulings of the Department:

T. D. 24855: "Products of Cuba previously imported for which *no permit to deliver* has been issued are subject to the provision of Cuban Reciprocity Treaty if entered or withdrawn after midnight of December 26, 1903. See Act of December 15, 1902, T. D. 24109."

T. D. 24924: "Cuban tobacco and other articles the product of the soil or industry of Cuba, imported and entered in bond for warehousing prior to the taking effect of the Convention aforesaid, *upon which duties have not been paid and for which no delivery permits has been issued*, may be withdrawn for consumption * * * at the reduced rate provided in said Convention in accordance
21 with Section 20, Act of June 10, 1890, as amended by the Act of December 15, 1902."

In this connection Department's attention is called to T. D. 22847 wherein the question is exhaustively discussed as to the time Customs costody ceases on duty-paid merchandise for which delivery permits have been lodged with the proper Customs officer.

In the opinion of this office the Act of December 15, 1902, amending Section 20 of the Act of June 10, 1890, as amended, upon which are based Department's rulings above quoted relative to withdrawals from warehouse of Cuban products under the Reciprocity Convention with that country, is much broader in scope than Section 20 of the Act of June 10, 1890, as amended by Section 54 of the Act of October 1, 1890. The latter provides for any merchandise *deposited in bond*, whereas the former covers any merchandise *deposited in any public or private bonded warehouse*. It would seem that the provisions of the latter law were broad enough to cover any duty-paid merchandise remaining in a bonded warehouse under Customs custody.

The letter of the Franklin Sugar Refining Co., is returned herewith.

Respectfully,

(Signed) L. G. MARTIN,

1 encl. *Special Deputy Collector.*

22 EXHIBIT E. S. 1693.

(Copy.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, *June* 24, 1904.

The Collector of Customs, Philadelphia, Pa.

SIR: The Department is in receipt of your letter of the 16th instant reporting upon the application of The Franklin Sugar Refining Co., for reliquidation of warehouse entry No. 15466 covering a cargo of sugar, the product of Cuba, imported at your port per S. S. "Carisbrook," on September 29, 1903, and a reduction of 20 per cent. under the Cuban reciprocity treaty of the rate and amount of duty assessed on 4,529 bags of centrifugal sugar and 67 bags of sugar sweepings forming a part of said cargo.

According to your report the facts are as follows:

The merchandise was stored in the Spreckles bonded warehouse at your port. Between September 29, and October 10, 1903, inclusive, withdrawal entries were made for the entire cargo and duties at the regular rates provided in the present tariff act were paid thereon. At the time the withdrawal entries were made the delivery permits were lodged with the storekeeper. All the cargo, excepting 4,529 bags of sugar and 67 bags of sweepings, was actually delivered to the importers prior to the taking effect of the
23 reciprocal commercial convention between the United States and Cuba promulgated in Department circular No. 135 of December 23, 1903, (T. D. 24836). Of the sugar remaining in warehouse on the morning of December 27, 1903, the date said convention went into effect, 1,250 bags were delivered to the importers by the storekeeper on December 28, 1903, and the remaining 3,279 bags of sugar and 67 bags of sweepings on the following day, December, 29th.

The entry was liquidated on May 25, 1904, and duty assessed at the regular rates on the entire cargo, no allowance having been made on that portion which remained in warehouse after the Cuban reciprocity treaty went into effect.

In support of their claims that they are entitled to the reduction provided in the treaty on that part of the cargo which remained in warehouse on the date the convention took effect, the petitioners cite T. D. 22847 of March 1, 1901, relating to allowance for damage by a casualty to imported merchandise while in Customs custody, and to the decision handed down by the United States Circuit Court of Appeals, Second Circuit, in Mosle *vs.* Bidwell, on April 25th last, (T. D. 25276).

The Department has not acquiesced in the opinion of the court in Mosle *vs.* Bidwell, and as the case was remanded to the
24 United States Circuit Court for a new trial, and has not, therefore, been finally disposed of. But aside from the views expressed by the court in that case, or from the question as to the

finalty of the court's decision, the Department is of the opinion that neither the decision of the court in Mosle *vs.* Bidwell, nor T. D. 22847, *supra*, can be construed as having any application to this case, and this leads me to remark that there is no merit in the argument advanced by the petitioners, and supported by the opinion expressed by you, to the effect that Section 20 of the Act of June 10, 1890, as amended by the Act of December 15, 1902, is broader in scope than Section 54 of the Act of October 1, 1890, amendatory of Section 20 of the Act of June 10, 1890, for the reason that the words "in bond" which appeared in Section 54 of the Act of October 1, 1890, were omitted from the law as amended by the Act of December 15, 1902. The word "withdrawal," as that term is employed in the law, presupposes that the merchandise the subject of withdrawal is in warehouse under bond or "in bond." However, it is needless to discuss this phase of the question, inasmuch as the Department has promulgated special regulations governing importations and withdrawals under the Cuban reciprocity treaty. In T. D. 24855 and 24924 of December 29, 1903, and January 20, 1904, the Department held that the articles the product of the soil or industry of Cuba,
imported and entered in bond for warehousing prior to the
25 taking effect of the reciprocal convention and withdrawn for
consumption after the treaty took effect, and within three years from the date of the original importation, would be entitled to the benefits of the treaty, provided the duties HAD NOT BEEN PAID, and that NO DELIVERY PERMIT HAD BEEN ISSUED.

In view of the foregoing, and the express provisions of Section 14 of the Act of June 10, 1890, as to protest within ten days after the liquidation of the duties, the Department must decline to grant the application in this case.

Respectfully,

(Signed) C. H. KEEP,
Assistant Secretary.

26 EXHIBIT F. S. 1693.

Franklin Granulated Sugar.

The Franklin Sugar Refining Co., Office Stock Exchange Place.

(Lock Box 1630)
Central Station.

PHILADELPHIA, *July* 1, 1904.

The Honorable The Secretary of the Treasury, Washington, D. C.

SIR: We have received Department's decision of June 24 in the matter of our application of June 8th, for authority to the Collector of Customs at Philadelphia to re-liquidate an entry of sugar, the product of Cuba, imported per s/s "Carisbrook" W. H. Entry #15466, September 29, 1903, with an allowance of 20 per cent. of the rates of duty provided by Tariff Act of July 24, 1897, on 4529 bags Centrifugal Sugar and 67 bags of Sugar Sweepings, part of said importation, withdrawn *i. e.*, removed from Bonded Ware-

house subsequent to December 28, 1903. As the concluding paragraph of the Department's decision of June 24, indicates the decision was in part predicated on the assumption that no protest had been filed in accordance with the express provisions of Section 14, Act of June 10, 1890, we desire to state that a timely protest was
27 filed with the Collector and the purpose of our application was to obtain authority for the Collector to reliquidate the entry under the protest filed, as provided by Article 1463, Customs Regulations of 1899. We think, therefore, that a review of this case should be granted by the Department, and if the refund cannot be authorized in the judgment of the Secretary of the Treasury, with the facts herewith presented, that it shall be submitted to the Attorney General for his opinion.

On September 29, 1903, Warehouse Entry was made for 23362 bags Cuban Sugar per s/s "Carisbrook," shipped from Havana Cardenas and Matanzas, Cuba,—Bills of Lading dated September 16 to September 22, 1903. The steamer arrived at Philadelphia September 28, 1903. The consular invoices certify that the sugars were the product of the Republic of Cuba. Under Warehouse Entry # 15466, the estimated duties were assessed at the rates provided in paragraph # 209, Act of July 24, 1897.

The sugars were all deposited in Spreckels' Bonded Warehouse, and the *estimated* duties were paid at various times between Sept. 29 and Oct. 10, but the sugars were not all removed from Bonded Warehouse until after December 27th 12.01 A. M.

Of said importation of sugar, there were in Customs custody in Bonded Warehouse December 28, 1903, at noon—4529 bags
28 Centrifugal sugars and 67 bags sugar sweepings, and the marks and quantities ascertained were certified to by the U. S. Storekeeper in charge of the Bonded Warehouse.

Said 4529 bags of sugar and 67 bags sweepings were actually withdrawn from the Bonded Warehouse on December 28th, and December 29th, 1903, and it is on these sugars withdrawn from the Bonded Warehouse subsequent to December 27th at 12.01 A. M. 1903,—the time declared by the Secretary of the Treasury that the treaty of Reciprocity with the Republic of Cuba became effective, on which we claim a reduction of 20 per cent. of the rate of duty as provided by said Cuban treaty.

Section 20 of the Act of June 10, 1890, provided:

"Any merchandise deposited in any public or private warehouse may be withdrawn for consumption within three years from the date of original importation, on payment of the duties and charges to which it may be subject by law at the time of such withdrawl:

Provided, that nothing herein shall effect or impair existing provisions of law in regard to the disposal of perishable or explosive articles."

This section was amended by Act of October 1, 1890, Section 54, by inserting the words "*in bond*." As amended the section read that:

"Any merchandise deposited in bond in any public or private bonded warehouse, may be withdrawn for consumption within three years from date of original importation on payment of the duties

and charges to which it may be subject by law at the time of such withdrawal;" etc.

Section 20 of the Act of June 20, 1890, was amended by the Act of December 15, 1902, to read as follows:

"That any merchandise deposited in any public or private bonded warehouse, may be withdrawn for consumption within three years from the date of the original importation on payment of the duties and charges to which it may be subject by law at the time of such withdrawal:

Provided: that the same rate of duty shall be collected thereon as may be imposed by law upon like articles of merchandise imported at the time of the withdrawal, and provided further that nothing herein can effect or impair existing provisions of law in regard to the disposal of perishable or explosive articles."

It will be noted that the words "in bond" inserted by the amendment of October 1st, 1890, are eliminated in the Act of December 15, 1902.

The Circuit Court of Appeals recently held in Mosle *vs.* Bidwell, U. S. C. C. A., Second Circuit, New York, April 25, 1904:

"No principles of statutory construction is better settled than the one which holds that the intention of the legislature when discovered, must prevail, any rule of construction declared by previous acts to the contrary notwithstanding. The following excerpts from United States *v.* Freeman (3 How. 556) are apposite to the case at bar:

A legislative act is to be interpreted according to the intention of the legislature apparent upon its face. * * * In doubtful cases, a court should compare all parts of a statute and different statutes *in pari materia* to ascertain the intent of the legislature. * * * If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute and if it can be gathered from a subsequent statute in *pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute."

It was therefore held, the provision in Section 20 of the Customs Administrative Act of June 10, 1890, that merchandise in bonded warehouse may be withdrawn for consumption, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal, means such payment as like merchandise would be subject to if imported at the time of withdrawal."

We cite the above to show the opinion of the Court as to what duty should be assessed on merchandise withdrawn from warehouse subsequent to a change in the tariff.

The importation per "Carisbrook" having been made subsequent to December 15, 1902, amending Section 20, there is no doubt but that the importation should be assessed at the same rate of duty as may be imposed by law upon like sugar imported at the time of the withdrawal.

In Department's decision of June 24th, it is said: "The word withdrawal as that term is employed in the law pre-supposes under bond or in bond."

Under date of August 15, 1873, Department held "merchandise in bonded warehouse on which duties have been paid, and permit for delivery issued, is until actually delivered from warehouse, considered as being in the custody of the officers of the Customs."

Section 2977 R. S., "Merchandise upon which duties have been paid may remain in warehouse in the custody of the officer of the Customs at the expense and risk of owners of such merchandise, and if exported directly from such custody, to a foreign country within three years shall be entitled to return duties."

Section 50, Act of October 1, 1890, "That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse, said duties shall be levied and collected on the weight of such merchandise at the time of its withdrawal."

31 Withdrawal here necessarily implies the removal of the merchandise. Certainly the act of reweighing must take place subsequent to the passing of a withdrawal entry so called through the Collector's office.

It is not disputed that the 4529 bags sugar and sweepings ex "Carsibrook" were in bonded warehouse on December 28, 1903, noon, and that the *estimated* duties had been paid thereon, the sugars were still in Customs custody (T. D. 16553), the delivery having been made December 28 and 29 by the U. S. Storekeeper and so reported. Had these sugars been exported, the duties would have been refunded (R. S. 2977). The entry per "Carisbrook" was liquidated May 25, 1904, and our protest was duly filed on June 3, 1904, within ten days after liquidation. We therefore think a reliquidation of the entry should be ordered.

There is another and broader reason why the Collector should be authorized to reliquidate the "Carisbrook" entry with a reduction of 20% of the rates of duty as provided by paragraph 209 Act of July 24, 1897. This case differs from the Hutcheson case recently decided by the Board of General Appraisers. The "Carisbrook" entry was liquidated subsequent to December 17, 1903, and there was no uncertainty as to what Congress had done with respect to the Cuban Reciprocity Treaty.

Recurring to U. S. *vs.* Freeman (3 How. 556):

"If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute, and if it can be gathered from a subsequent statute *in pari materia* what meaning the legislature attach to the words

32 of a former statute, they will amount to a legislative declaration of its meaning and will govern the construction of the first statute."

December 11, 1902, a Convention between the United States and the Republic of Cuba was signed by the respective plenipotentiaries, which provided:

Articles XI.—The present Convention shall be ratified by the proper authorities of the respective countries, and ratification shall be exchanged at Washington, D. C., U. S. A., as soon as may be before the 31st January, 1903, and the *convention shall go into effect on the 10th day after the exchange of ratifications*, and shall con-

tinue in force for the term of five years from date of going into effect."

A supplementary convention signed by the respective plenipotentiaries of the two countries on January 26, 1903, extended to the 31st March, 1903, the limit of time by which the ratification of the Convention must be exchanged at Washington. The Convention was ratified by the Senate of the United States March 19, 1903, under its constitutional authority to ratify treaties, and by resolution the following amendment was incorporated: "This convention shall not take effect until the same shall have been approved by Congress."

The resolution of the Senate was adopted in order to meet any constitutional objection that might be raised with the enactment of tariff legislation other than by Act of Congress originating in the House of Representatives. On November 19 the bill was passed by the House of Representatives entitled: "An Act to carry into
33 effect a convention of the United States and the Republic of Cuba signed on the 11th December, 1902: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the Convention between the United States and the Republic of Cuba signed on the 11th day of December in the year 1902, he is hereby authorized to issue his proclamation declaring that he has received such evidence — *thereupon on the 10th day after the exchange of ratification of such convention* between the United States and the Republic of Cuba, and so long as the said convention shall remain in force * * * and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba, imported into the United States shall be admitted at a reduction of 20% of the rates of duty thereon, as provided by the Tariff Act of the United States, approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted."

This Act which made the Convention effective on the 10th day after exchange of ratifications was passed by the Senate December 16, 1903, and signed by the President December 17, 1903.

We have therefore a legislative enactment providing definitely that the convention between the United States and the Republic of Cuba should go into effect on the 10th day after the exchange of ratifications. In a proclamation by the President dated December 17, 1903, it is stated:

"And whereas the said convention of December 11, 1902, as amended by the Senate of the United States and the said supplemental convention of January 26, 1903, have been duly ratified on both parts and the ratifications of the two governments were exchanged in the City of Washington on the 31st March, 1903."

The amendment to the original convention as made by the
34 Senate March 19, 1903. "This convention shall not take effect until the same shall have been approved by the Congress," should be read in connection with the explicit terms of the convention, "The convention shall go into effect on the 10th day

after the exchange of ratification" and the approval of Congress was necessary to make the convention effective at all and not that Congress should be authorized to fix a date *other* than "ten days after the exchange of ratifications," which ratifications shall be exchanged before the 31st of March, 1903. Construing the enabling Act of Congress of December 17, 1903, and following the ruling of the United States *vs.* Freeman (3 Howard 556) there is no doubt that Congress deliberately intended to approve the Convention as ratified and make it effective ten days after the exchange of ratifications; therefore on these grounds and because the importation per "Carisbrook" was withdrawn from Bonded Warehouse subsequent to ten days after the exchange of ratification the entry should have been liquidated with the reduction of 20% of the rates of duty provided by tariff act of July 24, 1897, and the convention with the Republic of Cuba ratified March 31, 1903.

We respectfully submit the above for your careful and favorable consideration.

Yours respectfully,

THE FRANKLIN SUGAR REFINING CO.

(Signed) E. A. ZELLER, Jr.

(*Copy.*)

35 **(Copy.)**

UNITED STATES CUSTOMS SERVICE,
PORT OF PHILADELPHIA, *July* 11, 1904.

The Honorable The Secretary of the Treasury, Washington, D. C.

SIR: Referring to Department's telegram of the 9th instant directing this office to transmit all papers connected with protest, entry and withdrawals in the matter of the application of the Franklin Sugar Refining Company for reliquidation of entry No. 15466 of Cuban sugars ex "Carisbrook" September 29, 1903, I have the honor to enclose herewith the following documents:

Entry W. H. 15466, together with the corresponding invoice. Department's attention is called to the special report attached to the entry, of the Chief of the Warehouse Division as to the dates on which this cargo was delivered by the storekeepers to the importers.

Five withdrawal from warehouse entries showing the dates the duties were paid on the above cargo and the delivery permits issued.

Five delivery permits corresponding to the above withdrawal entries on which are noted the dates when said permits were lodged with the storekeepers.

Exhibit G. C. 1693.

36 Twenty-six daily returns of the storekeepers of the Spreckles bonded warehouse in which the above sugars were stored, showing the dates on which the sugars imported on the S. S. "Carisbrook" were actually delivered by the storekeepers to the Franklin Sugar Refining Company.

Respectfully,

(Signed) L. G. MARTIN,
Special Deputy Collector.

38 encls.

37 (Copy.)

EXHIBIT H.

S. 1693.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY.
Dep. Col. WASHINGTON, *July* 22, 1904.

The Collector of Customs, Philadelphia.

SIR: The Department duly received your letter of the 11th instant transmitting all papers connected with the protest, entry and withdrawals in the matter of the application of the Franklin Sugar Refining Company for the reliquidation of warehouse entry No. 15466, covering a cargo of sugar, the product of Cuba, imported at your port per S. S. "Carisbrook," on September 29, 1903, and a reduction of 20 per cent. under the Cuban reciprocity treaty, of the rate and amount of duty assessed on 4,529 bags of centrifugal sugar and 67 bags of sugar sweepings forming a part of said cargo.

As the importers filed a timely protest you will transmit the same, together with all the papers connected therewith, to the Board of U. S. General Appraisers, under the provisions of Section 14 of the Act of June 10, 1890.

The protest and all the other papers in the case submitted by you are herewith returned.

Respectfully,
(Signed) R. B. ARMSTRONG.
Assistant Secretary.

38 E. H. Bailey & Co., 406 Sansom St., Philadelphia.

PHILADELPHIA, *June* 5, 1904.

Collector's Office, Received Jun. 3, 1904. No. 24363 Custom House, Philadelphia."

Hon. C. Wesley Thomas, Collector of Customs, Port of Philadelphia.

SIR: We hereby protest against your decision as to the rate and amount of duty exacted by you on importation of 23399 bags of sugar the product of the soil or industry of the Republic of Cuba imported into the United States per Sp. "Carisbrook," from Havana, Cardenas, Matanzas, Cuba, duly entered in bonded warehouse Sept. 29, 1903, W. H. Entry 15466 and withdrawn for consumption subsequent to the tenth day after the exchange of ratifications of a Convention between the United States and the Republic of Cuba signed December 11, 1902, said entry having been liquidated May 25, 1904, after due notice had been received by Collector of Customs of an Act of Congress duly approved giving due force and effect to said Convention, and providing for certain reductions in the rates of duty as provided by Tariff Act of July 24, 1897.

We protest against liquidation of this entry for the reasons, viz:

1. The sugars of this entry being the product of the soil or indus-

try of the Republic of Cuba are entitled to a reduction of twenty per centum of the rates of duty thereon as provided by the Tariff Act of the United States approved July 24, 1897—Article II Convention with Cuba—ratifications exchanged Washington March 31, 1903.

2. The sugars of this entry were deposited in Bonded warehouse and were withdrawn for consumption subsequent to the tenth day after the exchange of ratifications of Convention with Cuba, and were subject to the same rate of duty as imposed on Cuban Sugars imported subsequent to the tenth day after the exchange of ratifications of said Convention with Cuba—Act of Dec. 15, 1902 amending section 20 Act of June 10, 1890, etc.

Exhibit I. S. 1693.

39 3. The sugars of this entry were withdrawn for consumption subsequent to March 19, 1903, the date when the treaty or Convention entered into by the President of the United States and the President of the Republic of Cuba and signed December 11, 1902, was concurred in by the Senate of the United States as provided by Sec. 3, Article II of the Constitution of the United States.

4. The sugars of this entry were withdrawn for consumption subsequent to the tenth day after the exchange of ratifications of said Convention—Ratifications having been exchanged at Washington March 31, 1903, as certified by the President of the United States in his Proclamation of December 17, 1903.

5. The sugars of this entry were withdrawn for consumption subsequent to the tenth day after the exchange of ratifications as provided by Article XI of the Convention with Cuba—"and the Convention *shall go into effect on the tenth day after the exchange of ratifications.*

6. The sugars of this entry were withdrawn for consumption subsequent to the tenth day after exchange of ratifications as provided by an Act of Congress entitled An Act to carry into effect a Convention between the United States and the Republic of Cuba signed on the eleventh day of December in the year 1902—"on the tenth day after exchange of ratifications of such convention between the United States and the Republic of Cuba and so long as the said convention shall remain in force—and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897."

7. The Collector of Customs has erred in failing to allow a reduction of twenty per centum of the rates of duty as provided by Act of July 24, 1897,—on sugars of this entry as provided by Convention with Republic of Cuba which Convention *was in effect* on the tenth day after the exchange of ratifications—

as provided by original Convention signed December 11, 1902
as provided by amended Convention approved March 19, 1903 by U. S. Senate and ratified by Cuban Senate—Ratifications exchanged March 31, 1903

and as provided by Act of Congress approved December 17, 1903.

8. The President of the United States erred in proclaiming the Convention to be in effect on the tenth day from the date of his Proclamation of December 17, 1903, because the Convention as amended by U. S. Senate and under which ratifications were exchanged in Washington March 31, 1903, provided that "the Convention shall go into effect on the tenth day after the exchange of ratifications."

9. Article XI of the said Convention required "the ratifications shall be exchanged at Washington, D. C. U. S. A., as soon as may be before the 31st — January 1903," which period was by a supplementary Convention signed by the respective plenipotentiaries of the two countries on January 26, 1903, extended to the 31st — March, 1903; therefore under the Convention there could not have been an effective exchange of ratifications later than March 31, 1903.

We respectfully request reliquidation and assessment of duty under Article II of the Treaty with the Republic of Cuba, ratified March 31, 1903; at a reduction of twenty per centum of the rates of duty thereon as provided by the Tariff Act of the United States, approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted.

We further claim that the sugars of this entry are subject to a reduction in duty of twenty per centum of the rates provided by an Act of Congress approved March 8, 1902, a tariff law of the United States enacted subsequently to Tariff Act of July 24, 1897.

Very respectfully,

THE FRANKLIN SUGAR REFINING CO.,
Per W. H. THORNLEY.

Endorsed: Protest, May 3, 1904. F. W. D. June 3, 1904. Philadelphia, Pa. 139779. Protest (Col) No. 24363. Entry No. W. H. 15466. Name Franklin Sugar Ref. Co. Subject Sugar, product of Cuba. Vessel Carisbrook. Dt. Entry Sept. 19, 1903. Dt. Liq. May 25, 1904. Duties paid W. H.

E. H. Bailey & Co., 406 Sansom St., Philadelphia.

PHILADELPHIA, *June* 18, 1904.

Collector's Office, Received, Jun. 18, 1904. Custom House, Philadelphia."

Hon. C. Wesley Thomas, Collector of Customs, Port of Philadelphia.

SIR: We hereby protest against your decision as to the rate and amount of duty exacted by you on importation of 8238 bags centrifugal 1762 bags molasses sugar the product of soil or industry of the Republic of Cuba imported into the United States per sp. "Thornley," from Cardenas & Caibarien, Cuba, duly entered in bonded warehouse Sept. 29, 1903, W. H. Entry 15483 and withdrawn for consumption subsequent to the tenth day after the exchange of ratifications of a Convention between the United States and the Re-

public of Cuba signed December 11, 1902, said entry having been liquidated June 16, 1904, after due notice had been received by Collector of Customs of an Act of Congress duly approved giving due force and effect to said Convention, and providing for certain reductions in the rates of duty as provided by Tariff Act of July 24, 1897.

We protest against liquidation of this entry for the reasons, viz:

1. The sugars of this entry being the product of the soil or industry of the Republic of Cuba are entitled to a reduction of twenty per centum of the rates of duty hereon as provided by the Tariff Act of the United States approved July 24, 1897—Article II Convention with Cuba—ratifications exchanged Washington March 31, 1903.

2. The sugars of this entry were deposited in Bonded warehouse and were withdrawn for consumption subsequent to the tenth day after the exchange of ratifications of Convention with Cuba and were subject to the same rate of duty as imposed on Cuban Sugars imported subsequent to the tenth day after the exchange of ratifications of said Convention with Cuba—Act of Dec. 15, 1902 amending section 20 Act of June 10, 1890, etc.

Exhibit J. S. 1693.

42 3. The sugars of this entry were withdrawn for consumption subsequent to March 19, 1903, the date when the treaty or Convention entered into by the President of the United States and the President of the Republic of Cuba and signed December 11, 1902, was concurrd in by the Senate of the United States as provided by Sec. 3, Article II of the Constitution of the United States.

4. The sugars of this entry were withdrawn for consumption subsequent to the tenth day after the exchange of ratifications of said Convention—Ratifications having been exchanged at Washington March 31, 1903, as certified by the President of the United States in his Proclamation of December 17, 1903.

5. The sugars of this entry were withdrawn for consumption subsequent to the tenth day after the exchange of ratifications as provided by Article XI of the Convention with Cuba—"and the Convention *shall go into effect on the tenth day after the exchange of ratifications.*

6. The sugars of this entry were withdrawn for consumption subsequent to the tenth day after exchange of ratifications as provided by an Act of Congress entitled—An Act to carry into effect a Convention between the United States and the Republic of Cuba signed on the eleventh day of December in the year 1902—"on the tenth day after exchange of ratifications of such convention between the United States and the Republic of Cuba and so long as the said Convention shall remain in force—and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty percentum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897."

7. The Collector of Customs has erred in failing to allow a reduction of twenty percentum of the rates of duty as provided by Act of July 24, 1897,—on sugars of this entry as provided by Convention

with Republic of Cuba which Convention *was in effect* on the tenth day after the exchange of ratifications—
as provided by original convention signed December 11, 1902
as provided by amended Convention approved March 19, 1903 by U. S. Senate and ratified by Cuban Senate—Ratifications exchanged March 31, 1903.
and as provided by Act of Congress approved December 17, 1903.

8. The President of the United States erred in proclaiming the Convention to be in effect on the tenth day from the date of
43 his proclamation of December 17, 1903, because the Convention as amended by U. S. Senate and under which ratifications were exchanged in Washington March 31, 1903 provided that "the Convention shall go into effect on the tenth day after the exchange of ratifications."

9. Article XI of the said Convention required "the ratifications shall be exchanged at Washington, D. C., U. S. A., as soon as may be before the 31st January 1903," which period was by a supplementary Convention signed by the respective plenipotentiaries of the two countries on January 26, 1903, extended to the 31st March, 1903; therefore under the Convention there could not have been an effective exchange of ratifications later than March 31, 1903.

We respectfully request reliquidation and assessment of duty under Article II of the Treaty with the Republic of Cuba, ratified March 31, 1903; at a reduction of twenty per centum of the rates of duty thereon as provided by the Tariff Act of the United States, approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted.

We further claim that all the sugars of this entry are subject to a reduction in duty of twenty percentum of the rates provided by an Act of Congress approved March 8, 1902, a tariff law of the United States enacted subsequently to Tariff Act of July 24, 1897.

Very respectfully,

THE FRANKLIN SUGAR REFINING CO.,
Per W. H. THORNLEY.

Endorsed: Protest, June 18, 1904. Philadelphia, Pa. 139,780. Protest No. 24571. Entry No. W. H. # 15483. Name, Franklin Sugar Ref. Co. Subject Sugar Product of Cuba. Vessel Thornley. Dt. Entry Sept. 29, 1903. Dt. Liq. June 16, 1904. Duties paid W. H.

44 CUSTOMS HOUSE,
PORT OF PHILADELPHIA, *Nov.* 4, 1904.

I submit herewith the protests described below with the accompanying invoice and entr- against my assessment of duty at the rates named in the Act of July 24, 1897 on certain sugars, the product of Cuba claimed said rates are subject to a reduction of 20% T. D. 24836 returned by the Appraiser as raw sugar and assessed with duty under par. 209 Act of July 24, 1897, in accordance with Board's rulings of T. D. 25427, 25255. The requirements of Section

14, Act of June 10, 1890, have been complied with by the protester Franklin Sugar Refining Co.

The above sugars were withdrawn from W. H. between March 19, 1903 and Dec. 17, 1903.

Respectfully,

(Signed) L. G. MARTIN,
Special Deputy Collector of Customs.
A. W. D.

To the Board of U. S. General Appraisers, New York.

Exhibit K. S. 1693.

45

No.	Name of importer.	Vessel.	Date of entry.
*24363	Franklin Sugar Refg. Co....	Carisbrook..	Sept. 29, 190
24571	" " " "	Thornley....	" " "

*Invoice forwarded with protest #24367, July 26, 1904.

NOTE.—In transmitting protests, the requirements of Article- 1464, 1465 and 1466, Customs regulations of 1899, should be strictly complied with. The number of inclosures should always be stated, and, in counting the same, each separate detached paper, or group of papers (fastened together by pins, mucilage, or otherwise), should be counted as one. Number of inclosures 3.

Endorsed: Cat. No. 182. 139,779, 139,780. Philadelphia, Nov. 4, 1904. C. Wesley Thomas, Collector of Customs. Transmits Protest of Franklin Sugar Refining Co. Entry and invoices with protest No. —. Cuban Treaty. Enclosures 3. Received by Board of U. S. General Appraisers, Nov. 5, 1904. W. H. Tietgen.

46 Custom House, Phila., Dec. 22, 1903, Special Deputy Collector.

Cuban Reciprocity.

1903.
Department Circular No. 135.
Division of Customs.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, *December* 21, 1903.

To Collectors and other Officers of the Customs:

The appended proclamation of the President of December 17, 1903, embraced the Act of Congress, approved December 17, 1903, entitled "An Act To carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of De-

cember, in the year nineteen hundred and two," together with said convention, is published for the information and guidance of all concerned.

Said convention will become operative 12.01 A. M., December 27, 1903.

LESLIE M. SHAW, *Secretary.*

By the President of the United States of America.

A Proclamation.

47 Whereas a convention between the United States of America and the Republic of Cuba to facilitate their commercial intercourse by improving the conditions of trade between the two countries, was concluded and signed by their respective plenipotentiaries at the City of Havana on the eleventh day of December, 1902, the original of which convention, being in the English and Spanish languages, is, as amended by the Senate of the United States, word for word as follows:

The President of the United States of America and the President of the Republic of Cuba, animated by the desire to strengthen the bonds of friendship between the two countries, and to facilitate their commercial intercourse by improving the conditions of trade between them, have resolved to enter into a convention for that purpose, and have appointed their respective Plenipotentiaries, to-wit:

The President of the United States of America, the Honorable Tasker H. Bliss;

The President of the Republic of Cuba, the Honorable Carlos de Zaldo y Beurmann, Secretary of State and Justice, and the Honorable José M. Garcia y Montes, Secretary of the Treasury; who, after an exchange of their full powers found to be in good and due form, have, in consideration of and in compensation for the respective concessions and engagements made by each to the other as hereinafter recited, agreed and do hereby agree upon the following Articles for the regulation and government of their reciprocal trade, namely:

Article I.

During the term of this convention, all articles of merchandise being the product of the soil or industry of the United States which are now imported into the Republic of Cuba free of duty, and all articles of merchandise being the product of the soil or industry of the Republic of Cuba which are now imported into the United States free of duty, shall continue to be so admitted by the respective countries free of duty.

Article II.

During the term of this convention, all articles of merchandise not included in the foregoing Article I and being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty per centum of the

rates of duty thereon as provided by the Tariff Act of the United States approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted.

48 Article III.

During the term of this convention, all articles of merchandise not included in the foregoing Article I and not hereinafter enumerated, being the product of the soil or industry of the United States, imported into the Republic of Cuba shall be admitted at a reduction of twenty per centum of the rates of duty thereon as now provided or as may hereafter be provided in the Customs Tariff of said Republic of Cuba.

Article IV.

During the term of this convention, the following articles of merchandise as enumerated and described in the existing Customs Tariff of the Republic of Cuba, being the product of the soil or industry of the United States imported into Cuba shall be admitted at the following respective reductions of the rates of duty thereon as now provided or as hereafter may be provided in the Customs Tariff of the Republic of Cuba:

Schedule A.

To be admitted at a reduction of twenty-five (25) per centum:

Machinery and apparatus of copper or its alloys or machines and apparatus in which copper or its alloys enter as the component of chief value; cast iron, wrought iron and steel, and manufactures thereof; articles of crystal and glass, except window glass; ships and water borne vessels of all kinds, of iron or steel; whiskies and brandies; fish, salted, pickled, smoked or marinated; fish or shellfish, preserved in oil or otherwise in tins; articles of pottery or earthenware now classified under Paragraphs 21 and 22 of the Customs Tariff of the Republic of Cuba.

Schedule B.

To be admitted at a reduction of thirty (30) percentum:

Butter, flour of wheat; corn; flour of corn or corn meal; chemical and pharmaceutical products and simple drugs; malt liquors in bottles; non-alcoholic beverages; cider; mineral waters; colors and dyes; window glass; complete or partly made up articles of hemp, flax, pita, jute, henequen, ramie and other vegetable fibers now classified under the paragraphs of Group 2, Class V, of the Customs Tariff of the Republic of Cuba; musical instruments; writing and printing paper, except for newspapers; cotton and manufactures thereof, except knitted goods (see Schedule C); all articles of cutlery; boots; shoes; and slippers; now classified under paragraphs 197 and 198 of the Customs Tariff of the Republic of Cuba;
49 gold and silver plated ware; drawings, photographs, engravings, lithographs, cromolithographs, oleographs, etc., printed

from stone, zinc, aluminum or other material, used as labels, flaps, bands and wrappers for tobacco or other purposes, and all the other paper*d* (except paper for cigarettes, and excepting maps and charts), pasteboard and manufactures thereof, now classified under Paragraphs 157 to 164 inclusive of the Customs Tariff of the Republic of Cuba; common or ordinary soaps, now classified under Paragraph 105, letters "A" and "B" of the Customs Tariff of the Republic of Cuba; vegetables, pickled or preserved in any manner; all wines, except those now classified under Paragraph 279 (*a*) of the Customs Tariff of the Republic of Cuba.

Schedule C.

To be admitted at a reduction of forty (40) per centum:

Manufactures of cotton, knitted, and all manufactures of cotton not included in the preceding schedule; cheese; fruits, preserved; paper pulp; perfumery and essences; articles of pottery and earthenware now classified under Paragraph 20 of the Customs Tariff of the Republic of Cuba; porcelain; soaps, other than common, now classified under Paragraph 105 of the Customs Tariff of the Republic of Cuba; umbrellas and parasols; dextrine and glucose; watches; wool and manufactures thereof; silk and manufactures thereof; rice, cattle.

Article V.

It is understood and agreed that the laws and regulations adopted, by the United States and by the Republic of Cuba, to protect their revenues and prevent fraud in the declarations and proofs that the articles of merchandise to which this convention may apply are the product or manufacture of the United States and the Republic of Cuba, respectively, shall not impose any additional charge or fees therefor on the articles imported, excepting the consular fees established, or which may be established, by either of the two countries for issuing shipping documents, which fees shall not be higher than those charged on the shipments of similar merchandise from any other nation whatsoever.

Article VI.

It is agreed that the tobacco, in any form, of the United States or of any of its insular possessions, shall not enjoy the benefit of any concession or rebate of duty when imported into the Republic of Cuba.

 Article VII.

It is agreed that similar articles of both countries shall receive equal treatment on their importation into the ports of the United States and of the Republic of Cuba, respectively.

Article VIII.

The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of this convention preferential in respect to all like imports from other countries, and, in return for said preferential rates of duty granted to the Republic of Cuba by the United States, it is agreed that the concession herein granted on the part of the said Republic of Cuba to the products of the United States shall likewise be, and shall continue, during the term of this convention, preferential in respect to all like imports from other countries. Provided, That while this convention is in force, no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897, and no sugar, the product of any other foreign country, shall be admitted by treaty or convention into the United States, while this convention is in force, at a lower rate of duty than that provided by the tariff act of the United States approved July 24, 1897.

Article IX.

In order to maintain the mutual advantages granted in the present convention by the United States to the Republic of Cuba and by the Republic of Cuba to the United States, it is understood and agreed that any tax or charge that may be imposed by the national or local authorities of either of the two countries upon the articles of merchandise embraced in the provisions of this convention, subsequent to importation and prior to their entering into consumption in the respective countries, shall be imposed and collected without discrimination upon like articles whencesoever imported.

Article X.

It is hereby understood and agreed that in case of changes in the tariff of either country which deprive the other of the advantage which is represented by the percentages herein agreed upon,
51 on the actual rates of the tariffs now in force, the country so deprived of this protection reserves the right to terminate its obligations under this convention after six months' notice to the other of its intention to arrest the operations thereof.

And it is further understood and agreed that if, at any time during the term of this convention, after the expiration of the first year, the protection herein granted to the products and manufactures of the United States on the basis of the actual rates of the tariff of the Republic of Cuba now in force, shall appear to the government of the said Republic to be excessive in view of a new tariff law that may be adopted by it after this convention becomes operative, then the said Republic of Cuba may reopen negotiations with a view to securing such modifications as may appear proper to both contracting parties.

Article XI.

The present convention shall be ratified by the appropriate authorities of the respective countries and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the thirty-first day of January, 1903, and the convention shall go into effect on the tenth day after the exchange of ratifications, and shall continue in force for the term of five (5) years from the date of going into effect, and from year to year thereafter until the expiration of one year from the day when either of the contracting parties shall give notice to the other of its intention to terminate the same.

This convention shall not take effect until the same shall have been approved by the Congress.

In witness whereof, we, the respective Plenipotentiaries, have signed the same in duplicate, in English and Spanish, and have affixed our respective seals, at Havana, Cuba, this eleventh day of December, in the year one thousand nine hundred and two.

TASKER H. BLISS. [SEAL.]
CARLOS DE ZALDO. [SEAL.]
JOSÉ M. GARCIA MONTES. [SEAL.]

And whereas by the terms of the said convention it is provided that the ratifications thereof should be exchanged at the City of Washington as soon as may be before the thirty-first day of January, 1903, which period was by a Supplementary Convention signed by the respective Plenipotentiaries of the two countries on January 26, 1903, extended to the thirty-first day of March, 1903.

And whereas the said Convention of December 11, 1902,
52 as amended by the Senate of the United States, and the said Supplementary Convention of January 26, 1903, have been duly ratified on both parts and the ratifications of the two Governments were exchanged in the City of Washington on the thirty-first day of March, 1903;

And whereas by its resolution of March 19, 1903, the Senate of the United States added at the end of Article XI of the said Convention of December 11, 1902, the following amendment:

"This Convention shall not take effect until the same shall have been approved by the Congress;"

And whereas the Congress gave its approval to the said Convention by an Act approved December 17, 1903, entitled "An Act To carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two," which act is word for word as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two, he is hereby authorized to issue his proc-

lamation declaring that he has received such evidence, and thereupon on the tenth day after exchange of ratifications of such convention between the United States and the Republic of Cuba, and so long as the said Convention shall remain in force, all articles of merchandise being the product of the soil or industry of the Republic of Cuba, which are now imported into the United States free of duty, shall continue to be so admitted free of duty, and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States, approved July twenty-fourth, eighteen hundred and ninety seven, or as may be provided by any tariff law of the United States subsequently enacted. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of said convention preferential in respect to all like imports from other countries: *Provided*, That while said convention is in force no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the tariff Act of the United
53 States, approved July twenty-fourth, eighteen hundred and ninety-seven, and no sugar the product of any other foreign country shall be admitted by treaty or convention into the United States while this convention is in force at a lower rate of duty than that provided by the tariff Act of the United States approved July twenty-fourth, eighteen hundred and ninety seven; *and provided further*, That nothing herein contained shall be held or construed as an admission on the part of the House of Representatives that customs duties can be changed otherwise than by an Act of Congress, originating in said House.

SEC. 2. That so long as said convention shall remain in force, the laws and regulations adopted, or that may be adopted by the United States to protect the revenues and prevent fraud in the declarations and proofs, that the articles of merchandise to which said convention may apply are the product or manufacture of the Republic of Cuba, shall not impose any additional charge or fees therefor on the articles imported, excepting the consular fees established, or which may be established, by the United States for issuing shipping documents, which fees shall not be higher than those charged on the shipments of similar merchandise from any other nation whatsoever; that articles of the Republic of Cuba shall receive, on their importation into the ports of the United States, treatment equal to that which similar articles of the United States shall receive on their importation into the ports of the Republic of Cuba; that any tax or charge that may be imposed by the national or local authorities of the United States upon the articles of merchandise of the Republic of Cuba, embraced in the provisions of said convention, subsequent to importation and prior to their entering into consumption into the United States, shall be imposed and collected without discrimination upon like articles whencesoever imported.

And whereas satisfactory evidence has been received by the President of the United States that the Republic of Cuba has made provision to give full effect to the articles of the said convention:

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, in conformity with the said Act of Congress, do hereby declare and proclaim the said Convention, as amended by the Senate of the United States, to be in effect on the tenth day from the date of this my proclamation.

Wherefore I have caused the said Convention, as amended by the Senate of the United States, to be made public to the end that
54 the same and every clause thereof, as amended may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington, this 17th day of December, in the year of our Lord one thousand nine hundred and three and of the Independence of the United States the one hundred and twety-eighth.

[SEAL.] THEODORE ROOSEVELT.

By the President,
JOHN HAY,
Secretary of State.

55 EXHIBIT L. S. 1693.

Administration. Board 3.

Before the Board of U. S. General Appraisers.

In the Matter of the Protests of THE FRANKLIN SUGAR REFINING CO.,
No.'s 129306 and 139770 '80.

NEW YORK, *November* 30, 1904.

Present: General Appraiser Waite, General Appraiser Somerville, General Appraiser Hay.

Appearances.

H. J. Webster, Esq., Ass't Counsel for Treasury Dep't.
E. A. Zeller, Esq., Counsel for Importers.
W. J. Byrne, Stenographer.

56 ANTHONY W. DURAL, called as a witness in behalf of the importers, being duly sworn, testifies as follows:

By Mr. ZELLER:

Q. What is your occupation?
A. I am Deputy Collector in the Philadelphia Custom House.
Q. And are you also the Chief Clerk in charge of customs at Philadelphia?

A. Yes sir.

Q. As such you were called upon to investigate an importation by the Franklin Sugar Refining Co. per Carrisbrook, imported in September 1903 at the request of the Department?

A. Yes sir.

Q. With respect to a complaint of the Franklin Sugar Refining Co. in the matter of the liquidation of said Carrisbrook entry?

A. Yes sir.

Q. Did you find, sir that the facts as stated by the Franklin Sugar Refining Co. in their complaint were that certain sugars imported per Carrisbrook were in bonded warehouse after December 27, 1903?

A. I found that to be the fact.

Q. And was there a report made by the United States Storekeeper with reference to the withdrawal of sugars?

57 A. Yes sir.

General Appraiser SOMERVILLE: Does the record show when the sugars were withdrawn from bond?

Mr. ZELLER: It does.

Q. The storekeeper made the report?

A. He did.

Q. Kindly state what the storekeeper in charge reported?

A. The storekeeper makes a daily return of goods delivered from his store in the preceding day. On December 28th he delivered 1250 bags of sugar from the Carisbrook to the Franklin Sugar Refining Co.

Q. And on December 29th?

A. He makes two reports. On the first report he says that he delivered 2849 bags, and in a subsequent report he reports the delivery of 430 bags of sugar and 67 bags of sweepings from the same cargo, the Carisbrook, all for the Franklin Sugar Refining Co.

By General Appraiser SOMERVILLE:

Q. Where did this sugar come from?

A. Cuba.

By Mr. ZELLER:

Q. You find that the sugars of this entry were a product of the republic of Cuba?

Objected to. Objection sustained.

58 Q. That paper in your hand (referring to paper afterward marked Ex. 1) is the authoritative statement from the Secretary of the Treasury stating to collectors of customs that the Cuban tariff was effective December 27, 1903, at 12:01 A. M.?

A. (Witness examining.) This was a notice to the collector when the Cuban treaty went into effect.

Paper referred to admitted in evidence as Ex. 1–129306.

By Mr. WEBSTER:

Q. Did your duties at the Philadelphia Custom House have any

relation to the issuing of delivery permits for goods in bonded warehouse?

A. No, nothing directly, no sir.

Q. Is there anything in the papers before you, the official papers, that will enable you to state the date upon which the permit of delivery was issued as to these goods in question?

A. I think the delivery permits are a part of the record. I sent them over here in this case.

Q. Will you look at the papers in this case, and see if the delivery permits are there?

A. They are, yes sir.

Q. Will you state from the papers the date of the delivery permits for these lots concerning which you have testified?

A. These delivery permits call for in round figures 5,000
59 bags or 4,000 bags, and they were all issued at the custom house on or before October 10, 1903.

Q. And when were they presented to the storekeeper?

A. They were filed with the storekeeper on that date, or before that date.

Q. Were the duties paid on or before October 10th?

A. Estimated duties, yes.

Q. When the sugar was withdrawn and as they took out a permit for 5,000 bags, they paid the estimated duty on it?

A. Yes sir.

Q. And that permit was delivered when?

A. The last permit of this cargo was delivered October 10, 1903.

Q. Is it the custom at the Philadelphia Custom House to make up permits for delivery on bonded goods as soon as the entry is made?

A. We make up permits whenever the duties are paid, whenever the importer is willing to pay the duty he gets his permit.

Q. In this case it seems the importer paid his duty, got his permit, and did not withdraw the goods for over two months, or nearly three months?

A. That is it exactly; the goods stayed in the warehouse.

Q. Although the duties were paid?

A. Although the estimated duties were paid. The entry
60 had not been liquidated, finally adjusted.

Q. Well in withdrawing goods from warehouse it is always the estimated duties that are paid unless the entry has been finally liquidated?

A. Yes.

By Mr. ZELLER:

Q. You have testified that the goods were actually not removed from the bonded warehouse until after the —?

A. The return of the storekeeper would show that.

By General Appraiser HAY:

Q. When is it customary to liquidate—after the withdrawal of goods.

A. After the proper procedure has been gone through—after the goods have been weighed and after the chemist has tested it.

Q. The importers pay on the estimated duty enough to cover all the duties, and if he doesn't pay enough he pay- more?

A. He pays it on the final liquidation.

Q. If he pays too much?

A. He gets it back on the final liquidation.

Q. Really it is a deposit to cover the duty?

A. In the case of sugar the Secretary of the Treasury has issued instructions to collect so much on certain kinds of sugar.

Q. The withdrawal may be made before liquidation?

61 A. Yes sir.

Q. Well then, really the final liquidation is not made on the withdrawal of goods?

A. No sir.

By Mr. WEBSTER:

Q. On the last withdrawal, as I understand it, the amount must complete the payment according to the liquidation?

A. No, they can withdraw the whole cargo under a bond.

Q. And was a bond given in this case?

A. Yes sir.

Q. That would show that they anticipated withdrawal before final liquidation?

A. No.

Q. In what bonded warehouse were these goods?

A. Spreckels' Bonded Warehouse.

Q. Is that the property of the Government?

A. The Spreckels Bonded Warehouse is the property of the Spreckels Sugar Refining Co.

Q. And there is an officer of the Government there who is called a storekeeper?

A. Yes sir, two.

Q. And when a proper permit of delivery is presented to him signed by the collector he has no discretion except to deliver the goods covered by it?

A. He delivers whatever the importer calls for.

15 days granted for briefs.

62 EXHIBIT M. S. 1693.

G. A. 5885 (T. D. 25914).

UNITED STATES GENERAL APPRAISERS.
NEW YORK, *December* 30, 1904.

In the Matter of Protests 129,306, etc., of the Franklin Sugar Refining Co. against the Assessment of Duty by the Collector of Customs at the Port of Philadelphia, Pa.

Before Board 3.

SOMERVILLE, General Appraiser: The importations covered by these three protests consist of sugar exported from Cuba. The mer-

chandise arrived at the port of Philadelphia and was entered in bond prior to December 17, 1903. It was assessed for duty at the regular rates provided for by the tariff act of 1897, while the importers claim that there should be a deduction of 20 per cent. *ad valorem* under the provisions of the Treaty or Convention between the United States and the Republic of Cuba, which was proclaimed by the President on December 17, 1903 (T. D. 24836).

The testimony shows that the sugar covered by two of the protests, Nos. 139,779 and 139,780, was withdrawn from bonded warehouse for consumption prior to December 17, 1903. The goods covered by the other protest were not actually removed from bonded warehouse till December 27, 1903, but permits for delivery of the sugar had been issued and filed with the storekeeper not later than October 10, 1903.

In Hutchinson's case, C. A. 5724 (T. D. 25427), this Board has held that the Treaty between the United States and the Re-
63 public of Cuba referred to in the President's Proclamation above cited did not take effect, by its very terms, until its approval by the Congress of the United States, which was on December 17, 1903, and that the Treaty could not be construed to have any retrospective operation so as to apply to merchandise imported from Cuba prior to said date. After due consideration we are satisfied with the conclusions reached in that case and we need add nothing to the reasoning or the authorities there cited, which, in our judgment, fully support the conclusions reached. It is admitted that the importations in question covered by the two first named protests fall within the terms of that decision, but it is sought to differentiate these protests from those passed on in said decision, by the facts that the liquidation of the entries now under consideration was not made by the collector until after December 17, 1903, which was the day on which the Treaty was held by the Board to go into effect. In our judgment, this fact is entirely immaterial. In Abner Doble Co. *vs.* United States, 119 Fed. Rep., 152, 56 C. C. A., 40, it was held by the circuit court of appeals for the ninth circuit that the provisions of section 21 of the act of June 22, 1874 (U. S. Compiled Statutes, 1901, p. 1986), limiting the time within which duties may be *reliquidated* to one year from the date of entry, in the absence of fraud or protest by the owner or the importer does not oper-
64 ate to prevent the liquidation of duties on an article at any time after its entry in bond upon or after its withdrawal for consumption, when there has been no previous liquidation. As observed by the Court, "the law does not prescribe the time when the collector shall liquidate the duties. He may liquidate before or after a year after entry. The only limitation upon his action in that regard is that, after once liquidating, he may not, in the absence of fraud or protest by the owner, importer, agent or consignee, reliquidate after a year from the date of entry." To the same effect are the following authorities: U. S. *v.* De Rivern, 73 Fed. Rep., 679; Gandolfi *v.* United States, 74 Fed. Rep., 549, 20 C. C. A., 652. The Board has uniformly followed the principles laid down in these cases. In Hussa's case, G. A. 4309 (T. D. 20350), we observed as

follows: "It is immaterial that the *liquidation* of the duties was made after the proclamation became operative. This liquidation was nothing more than the decision of the collector as to the rate and amount of duties to which the merchandise was subject under the law. There is and was no law requiring such liquidation to be made within a given time. The time when the decision was made could not, therefore, change this rate or amount, especially in view of the provisions of section 13 of the United States Revised Statutes, the policy of which is recognized in section 34 of the present
65 tariff act of 1897, and of sections 72 and 55, respectively, of the acts of 1894 and of 1890, which were designed to "keep in force every right and liability of the Government or of any person which had been incurred or accrued prior to the passage of the new law or of any change of law pursuant to its provisions * * * Any other view of the law would lead to the unreasonable and inequitable result, that, where two separate importations of precisely the same kind of merchandise had been made and entered for consumption on the same day, they might be dutiable at different rates by reason of the collector's delay in making his liquidation of one of the entries, or by his purposely giving preference in point of time to the one or the other of the importers in deciding upon the rights of the parties under the law." This decision was affirmed, on appeal, by Townsend, J., October 20, 1902, Suit 2856.

Following these decisions, we hold that the goods in question covered by protests 139,779 and 139,780 were properly assessed for duty under the provisions of the tariff act of 1897, without any rebate under the provisions of the Treaty with Cuba.

We reach the same conclusion as to the sugar covered by protest 129,306, on the ground that the permits for the delivery of the sugar having been issued and filed with the storekeeper prior to the time when the Cuban Treaty went into effect, this fact operated
66 as a constructive withdrawal of the goods from bonded warehouse at that time. This precise question was settled by the Board in Denby's case, G. A. 3294 (T. D. 16649) (Suit 2327), which decision was subsequently affirmed by the circuit court for the southern district of New York in an unreported decision. The following language was used by the Board.

We find as matter of fact that the collector prepared and delivered to the importer a permit for delivery of the merchandise in accordance with the forms prescribed in article 497, Customs Regulations 1892, and that this permit was presented to the storekeeper at the bonded warehouse prior to August 28, 1894, but the merchandise was not actually delivered to the importer, being voluntarily allowed by him to remain in bonded warehouse unremoved from the possession of the storekeeper until after said date (U. S. Rev. Stat., Sec. 2977). These facts are substantially admitted to be true in the brief filed with the Board by the importer at the hearing of the case.

We accordingly find that the merchandise was, in legal effect, not in customs custody on or after August 28, 1894, but had been constructively delivered to the importer, and was already subject to his control.

All the sugar must therefore be considered as having been withdrawn from bonded warehouse for consumption prior to December 17, 1903, and was therefore subject to duty under the laws existing at the time of withdrawal by virtue of section 20 of the act of June 10, 1890, as amended by the act of Congress approved December 15, 1902, 32 U. S. Stat., Part I, p. 753. Mosle *v.* Bidwell, 130 Fed. Rep., 334.

The protests are all overruled, and the decision of the collector is affirmed.

(Signed) BYRON S. WAITE,
H. M. SOMERVILLE,
EUGENE G. HAY,
Board of U. S. General Appraisers.

67 And for a certified statement of the facts involved in said manner, as ascertained by them, the said Board states that the said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other Exhibits hereto attached.

(Signed) B. S. WAITE,
" H. M. SOMERVILLE,
Board of U. S. General Appraisers.
O. D. M.

Endorsed: 81 Oct. Sess. 1904. No. 1693. U. S. Circuit Court, Eastern District of Pennsylvania. In the matter of Franklin Sugar Refining Co. *v.* United States. Return of Record, Evidence, and Facts by Board of U. S. General Appraisers. Filed March 7, 1905. Samuel Bell, Clerk.

68 In the Circuit Court of the United States for the Eastern District of Pennsylvania, October Sessions, 1904.

No. 81.

FRANKLIN SUGAR REFINING COMPANY
vs.
UNITED STATES.

(Being an Application for Review of a Decision of the Board of United States General Appraisers.)

Affirming the Decision of the Board of General Appraisers.

HOLLAND, *J.:*

This is an application for a review of the decision of the Board of General Appraisers, assessing a duty on certain importations of sugar from Cuba into this country, at the regular rates provided for by the Tariff Act of 1897.

The facts are sufficiently set forth in the opinion, which is as follows:—

"The importations covered by these three protests consist of sugar exported from Cuba. The merchandise arrived at the port of Philadelphia and was entered in bond prior to December 17, 1903. It was assessed for duty at the regular rates provided for by the Tariff Act of 1897, while the importers claim that there should be a deduction of 20 per cent. *ad valorem* under the provisions of the Treaty or Convention between the United States and the Republic of Cuba, which was proclaimed by the President on December 17, 1903 (T. D. 24836).

69 The testimony shows that the sugar covered by two of the protests, Nos. 139,779 and 139,780, was withdrawn from bonded warehouse for consumption prior to December 17, 1903. The goods covered by the other protest were not actually removed from bonded wherehouse till December 27, 1903, but permits for delivery of the sugar had been issued and filed with the storekeeper not later than October 10, 1903.

In Hutcheson's case, G. A. 5724 (T. D. 25427), this Board has held that the Treaty between the United States and the Republic of Cuba referred to in the President's Proclamation above cited did not take effect, by its very terms, until its approval by the Congress of the United States, which was on December 17, 1903, and that the Treaty could not be construed to have any retrospective operation so as to apply to merchandise imported from Cuba prior to said date. After due consideration we are satisfied with the conclusions reached in that case and we need add nothing to the reasoning or the authorities there cited, which, in our judgment, fully support the conclusions reached. It is admitted that the importations in question covered by the two first-named protests fall within the terms of that decision, but it is sought to differentiate these protests from those passed on in said decision, by the fact that the liquidation of the entries now under consideration was not made by the collector until after December 17, 1903, which was the day on which the Treaty was held by the Board to go into effect. In our judgment, this fact is entirely immaterial. In Abner Doble Co. *vs.* United States, 119 Fed. Rep., 152, 56 C. C. A., 40, it was held by the Circuit Court of Appeals for the Ninth Circuit that the provisions of section 21 of the act of June 22, 1874 (U. S. Compiled Statutes, 1901, p. 1986), limiting the time within which duties may

70 be *reliquidated* to one year from the date of entry, in the absence of fraud or protest by the owner or the importer, does not operate to prevent the liquidation of duties on an article at any time after its entry in bond upon or after its withdrawal for consumption, when there has been no previous liquidation. As observed by the court, "the law does not prescribe the time when the collector shall liquidate the duties. He may liquidate before or after a year after entry. The only limitation upon his action in that regard is that, after once liquidating, he may not, in the absence of fraud or protest by the owner, importer, agent or consignee, reliquidate after a year from the date of entry." To the same effect are the following authorities: U. S. *vs.* De Rivera, 73 Fed. Rep., 679; Gandolfi *vs.* United States, 74 Fed. Rep., 549, 20 C. C. A., 652. The Board

has uniformly followed the principles laid down in these cases. In Hussa's case, G. A. 4309 (T. D. 20350), we observed as follows: "It is immaterial that the *liquidation* of the duties was made after the proclamation became operative. This liquidation was nothing more than the decision of the collector as to the rate and amount of duties to which the merchandise was subject under the law. There is and was no law requiring such liquidation to be made within a given time. The time when the decision was made could not, therefore, change this rate or amount, especially in view of the provisions of section 13 of the United States Revised Statutes, the policy of which is recognized in section 34 of the present Tariff act of 1897, and of sections 72 and 55 respectively, of the acts of 1894 and of 1890, which were designed to "keep in force every right and liability of the Government or of any person which had been incurred or accrued to the passage of the new law or of any change of law pursuant to its provisions. * * * Any other view of the law would lead to the unreasonable and inequitable result, that, where
71 two separate importations of precisely the same kind of merchandise had been made and entered for consumption on the same day, they might be dutiable at different rates by reason of the collector's delay in making his liquidation of one of the entries, or by his purposely giving preference in point of time to the one or the other of the importers in deciding upon the rights of the parties under the law." This decision was affirmed, on appeal, by Townsend, J., October 20, 1902, Suit 2856.

Following these decisions, we hold that the goods in question covered by protests 139779 and 139780 were properly assessed for duty under the provisions of the tariff act of 1897, without any rebate under the provisions of the Treaty with Cuba.

We reach the same conclusion as to the sugar covered by protest 129306, on the ground that the permits for the delivery of the sugar having been issued and filed with the storekeeper prior to the time when the Cuban Treaty went into effect, this fact operated as a constructive withdrawal of the goods from bonded warehouse at that time. This precise question was settled by the Board in Denby's case, G. A. 3294 (T. D. 16649) (Suit 2327), which decision was subsequently affirmed by the Circuit Court for the Southern District of New York in an unreported decision. The following language was used by the Board:

We find as a matter of fact that the collector prepared and delivered to the importer a permit for delivery of the merchandise in accordance with the forms prescribed in article 497, Customs Regulations 1892, and that this permit was presented to the storekeeper at the bonded warehouse prior to August 28, 1894, but the merchandise was not actually delivered to the importer, being voluntarily allowed by him to remain in bonded warehouse unre-
72 moved from the possession of the storekeeper until after said date (U. S. Rev. Stat., sec. 2977). These facts are substantially admitted to be true in the Brief filed with the Board by the importer at the hearing of the case.

We accordingly find that the merchandise was, in legal effect, not in customs custody on or after August 28, 1894, but had been

constructively delivered to the importer, and was already subject to his control.

All the sugar must therefore be considered as having been withdrawn from bonded warehouse for consumption prior to December 17, 1903, and was therefore subject to duty under the laws existing at the time of withdrawal by virtue of section 20 of the act of June 10, 1890, as amended by the act of Congress approved December 15, 1902, 32 U. S. Stat., Part 1, p. 753. Mosle *vs.* Bidwell, 130 Fed. Rep., 334.

The protests are all overruled, and the decision of the collector is affirmed."

For the reasons above set forth, we think the Board's conclusions are correct.

The decision of the Board of General Appraisers is therefore affirmed.

Endorsed: No. 81 October Sessions, 1904. U. S. C. C. Franklin Sugar Refining Co. *vs.* United States. Opinion of Court affirming the decision of the Board of General Appraisers. Filed Mar. 8, 1906. Samuel Bell, Clerk.

73 U. S. Circuit Court, October Sessions, 1904.

81.

In the Matter of the Application of THE FRANKLIN SUGAR REFINING COMPANY.

Decree.

HOLLAND, *J.*:

The above entitled cause having come on for hearing and determination before this Court, on the application of the Franklin Sugar Refining Company, for a review of the questions of law and fact involved in the decision of the Board of United States General Appraisers herein, and on the return of the said Board of Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decision thereon.

It is, to wit, this eighth day of March, A. D. 1906, on motion of J. Whitaker Thompson, Esq., Attorney of the United States for the Eastern District of Pennsylvania, hereby ordered, adjudged and decreed that the decision of the said Board of United States General Appraisers be, and the same is hereby in all respects affirmed, and the appeal of the said Franklin Sugar Refining Company therefrom be, and the same is hereby dismissed.

By the Court,

Attest: (Signed) GEORGE BRODBECK, JR.,
Pro Clerk.

Endorsed: #81 Oct. S. 1904. United States Circuit Court. In the matter of The Application of The Franklin Sugar Refining Co. Decree. Filed March 8, 1906. Samuel Bell, Clerk.

74 In the Supreme Court of the United States, October Term, 1904.

81.

THE FRANKLIN SUGAR REFINING COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee.

In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

To October Sessions, 1904. No. 81.

In the Matter of Certain Merchandise Imported by the Franklin Sugar Refining Company into the Port of Philadelphia.

Specifications of Error.

1. The learned Circuit Court erred in affirming the decision of the Board of General Appraisers in said cause.

2. The learned Circuit Court erred in not reversing the decision of the said Board.

3. The learned Circuit Court erred in not holding that by the terms of the Treaty between the United States and the Republic of Cuba, signed December 11th, 1902, said Treaty became operative and went into effect on the 10th day of April 1903.

4. The learned Circuit Court erred in substantially holding that the amendment to said Treaty by the United States Senate, which consisted of the addition thereto of the provision reading that "This convention shall not take effect until approved by the Congress," altered or repealed the provision in said Treaty reading that
75 "The Convention shall go into effect on the 10th day after the exchange of ratifications."

5. The learned Circuit Court erred in not holding that said Treaty upon the passage of the Act of Congress "to carry into effect" the same, approved December 17th, 1903, took effect and became operative as of the 10th day of April 1903.

6. The learned Circuit Court erred in not holding that the Act of Congress entitled "An Act to carry into effect a Convention between the United States and the Republic of Cuba, signed on the 11th day of December in the year 1902," was retroactive and provided for a reduction in the Customs duties on the merchandise therein specified, imported from Cuba subsequently to April 10th, 1903.

7. The learned Circuit Court erred in affirming the decision of the Board of General Appraisers, which permitted the imposition on all the sugars imported into the United States from the Republic of Cuba, after the 10th day of April 1903 and for the removal of which from bonded warehouse permits were given before December 17th, 1903, of the full rate of duty imposed by the Tariff

Act of July 20th, 1897, without the reduction of 20 per cent. thereof provided in the said Treaty of December 11th, 1902.

8. The learned Circuit Court erred in affirming the decision of the Board of General Appraisers, which permitted the imposition of said duties on such Sugars not actually removed from bonded warehouse until after December 27th, 1903.

9. The learned Circuit Court erred in substantially holding that said Treaty did not take effect until the 27th day of December 1903.

(Signed) JOHN G. JOHNSON
Attorney for Appellant.

Philadelphia, March 14, 1906.

76 Endorsed: No. 81 October Term 1904. In the Circuit Court of the United States. The Franklin Sugar Refining Co. Appellant, *vs.* The United States, Appellee. Specifications of Error. Filed Mar. 16, 1906. Samuel Bell, Clerk. John G. Johnson, For Appellant.

77 In the Circuit Court of the United States for the Eastern District of Pennsylvania, October Sessions, 1904.

No. 41.

THE FRANKLIN SUGAR REFINING COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee.

In the Matter of Certain Merchandise Imported by the Franklin Sugar Refining Company into the Port of Philadelphia.

Petition for Appeal.

To the Honorable the Judges of the said Court:

The Franklin Sugar Refining Company, the plaintiff in the above entitled cause, being aggrieved by the final judgment made and entered by the Court in the above entitled cause on the 8th day of March, A. D. 1906, whereby it is adjudged that the decision of the Board of General Appraisers affirming the decision of the Collector of Customs for the Port of Philadelphia be affirmed, and it is adjudged that sugars imported into the United States from the Republic of Cuba subsequently to the 10th day of April 1903, as to which permits for removal from bonded warehouse for consumption were given to said Company before December 17, 1903, were subject to the rates of duty provided by the Tariff Act of July 24th, 1897, and not to the rates of duty fixed by the Treaty between the United States and the Republic of Cuba, signed on the 11th day of December, 1902; whereby the construction of said Treaty and of the Act of Congress to carry the same into effect, approved December 17th, 1903, is drawn in question; representing to the Court that the question involved is of such importance as to require a review of such decision by the Supreme Court of the United States, comes now by

its Attorney, John G. Johnson, and petitions the Court for
78 an order allowing the said plaintiff to prosecute an Appeal from said judgment to the Supreme Court of the United States, in accordance with the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which plaintiff shall furnish upon such appeal, and that upon giving such security all further proceedings in this Court shall be stayed until the determination of said Appeal by the said Supreme Court of the United States.

And your petitioner will ever pray.

(Signed) JOHN G. JOHNSON,
Attorney for Petitioner,
By J. W. BAYARD.

March 10th, 1906.

79 In the Circuit Court of the United States for the Eastern District of Pennsylvania, October Sessions, 1904.

No. 41.

THE FRANKLIN SUGAR REFINING COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee.

In the Matter of Certain Merchandise Imported by the Franklin Sugar Refining Company into the Port of Philadelphia.

Order.

And now, March 16th, 1906, upon consideration of the foregoing petition and on motion of John G. Johnson, Attorney for the petitioner, the Court being of opinion that the question involved in the above entitled cause is of such importance as to require a review of the decision entered therein on the 8th day of March, 1906, by the Supreme Court of the United States, it is ordered that an Appeal to the Supreme Court of the United States from the final judgment heretofore filed and entered as aforesaid in the above entitled cause be and the same is hereby allowed, and that a certified transcript of the Record and of the proceedings herein be forthwith transmitted to the said Court.

It is further ordered that the Bond for damages and costs on said Appeal be and the same is hereby fixed at Five Hundred Dollars ($500).

(Signed) JAMES B. HOLLAND,
Judge of the said Court.

80 Endorsed: No. 81 October Sessions 1904. U. S. C. C. The Franklin Sugar Refining Company, Appellant, *vs.* The United States, Appellee. Petition for Appeal and Order allowing Appeal. Filed Mar. 16, 1906. Samuel Bell, Clerk. John G. Johnson, for Appellant.

81 In the Circuit Court of the United States for the Eastern District of Pennsylvania, October Sessions, 1904.

No. 41.

THE FRANKLIN SUGAR REFINING COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee.

In the Matter of Certain Merchandise Imported by the Franklin Sugar Refining Company into the Port of Philadelphia.

Bond.

Know all men by these presents, That we, The Franklin Sugar Refining Company, as principal, and Edwin A. Zeller, Jr., as surety, are held and firmly bound unto the United States of America for the full and just sum of Five Hundred Dollars ($500.), to be paid to the said United States of America, its certain Attorney or assigns: to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these Presents.

Sealed with our seals and dated this 17th day of March in the year of our Lord One Thousand Nine Hundred and Six (1906).

Whereas, lately at a session of the Circuit Court of the United States for the Eastern District of Pennsylvania in a certain suit dependent in said Court, between The Franklin Sugar Refining Company and the United States of America, to October Sessions 1904, No. 41, a judgment was rendered in favor of the defendant;

And whereas, the said plaintiff being dissatisfied with the said judgment and alleging that judgment should have been
82 entered in its favor in said suit for a sum not less than $36,950.81, has obtained the allowing of an Appeal, and has filed a copy thereof in the Clerk's Office of said Court to reverse the said judgment and a citation filed to the United States of America, citing and admonishing it to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington within thirty days.

Now the condition of the above obligation is such that if the said Franklin Sugar Refining Company shall prosecute this Appeal to effect and answer all damages and costs if it fail to make its plea good then the above obligation to be void; or else to remain in full force and virtue.

FRANKLIN SUGAR REFINING COMPANY. [SEAL.]
By JOSEPH A. BALL, *Ass't Treas.*
Attest: W. W. FRAZIER, Jr., *Secretary.*
EDWIN A. ZELLER, Jr.

Signed, sealed and delivered in the presence of:
M. L. HALLAHAN,
H. RUSSELL.
March 23d, 1906.

Approved:
(S'd) JAMES B. HOLLAND, *Judge.*

Endorsed: No. 41 October Sessions 1904. U. S. C. C. The Franklin Sugar Refining Company, Appellant, *vs.* The United States, Appellee. Bond on Appeal. The Within Bond is satisfactory to the United States. J. Whitaker Thompson, per Swartley, U. S. Attorney. John G. Johnson, For Appellant.

83 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at the City of Washington within thirty days, pursuant to an appeal, filed in the Clerk's Office of the Circuit Court of the United States, Eastern District of Pennsylvania, wherein the Franklin Sugar Refining Company is Appellant, and you are Appellee, to show cause, if any there be, why the Decree rendered against the said Appellant as in the said Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable James B. Holland, Judge holding Circuit Court of the United States this 23rd day of March A. D. one thousand nine hundred and six (1906).

(Signed) JAMES B. HOLLAND, *Judge.*

Service Accepted,

(S'd) J. WHITAKER THOMPSON,
United States Attorney.

Philadelphia, Mar. 27, 1906.

Endorsed: — 81 Oct. Sess. 1904. United States Circuit Court, Eastern District of Pennsylvania. The Franklin Sugar Ref. Co., *vs.* The United States. Citation. Filed March 27, 1906. Samuel Bell, Clerk.

84 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

I, Samuel Bell, Clerk of the Circuit Court of the United Sates of America for the Eastern District of Pennsylvania, in the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original Pleas and Proceedings in the matter of certain merchandise imported by The Franklin Sugar Refining Company, No. 81 October Session 1904, on file and now remaining among the records of the said Court in my office.

In Testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 27th day of March in the year of our Lord one thousand nine hundred and Six

and of the Independence of the United States the one hundred and Thirtieth.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of C. C.

[Endorsed:] No. 81. October Sessions, 1904. Circuit Court United States Eastern District of Pennsylvania. In the matter of certain Merchandise imported by The Franklin Sugar Refining Company. Certified Copy, Record.

Endorsed on cover: File No. 20,154. E. Pennsylvania C. C. U. S. Term No. 652. Franklin Sugar Refining Company, appellant, *vs.* The United States. Filed March 30th, 1906. File No. 20,154.

FILE COPY.

Supreme Court U. S.
FILED
MAY 8 1906
JAMES H. MCKENNEY,
Clerk.

No. 652.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

FRANKLIN SUGAR REFINING COMPANY, APPELLANT,

v.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

FRANKLIN SUGAR REFINING COMPANY, appellant, *v.* THE UNITED STATES. } No. 652.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The sugars referred to in this case were all imported at the port of Philadelphia on September 29, 1903, and entered in bonded warehouse.

Those covered by protests 139,779 and 139,780 (R., 20, 22) were withdrawn and actually removed from the warehouse prior to December 27, 1903, the date when the reciprocity treaty with Cuba became operative, according to the contention of the Government.

The 4,529 bags of sugar and 67 bags of sugar sweepings covered by protest 129,306 (R., 7) were not actually removed from the warehouse until December 28 and 29, 1903, but on October 10, 1903, withdrawal

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entry had been made for the same, the estimated duties paid, and a delivery permit therefor filed with the storekeeper.

All the sugars were assessed by the collector at the full rates provided by the tariff act of 1897, and this assessment was sustained by the Board of General Appraisers and the Circuit Court.

The questions raised by the importer are:

1. That the reciprocity treaty with Cuba went into effect in this country on April 10, 1903, or at least not later than December 17, 1903, the date of the act of Congress passed in execution of it.

2. That the sugars not actually removed from the bonded warehouse until after December 27, 1903, can not be held to have been withdrawn prior to that time.

3. That as the liquidation of the duties upon all these sugars did not take place until after December 27, 1903, they should have been assessed at the rates fixed by the treaty, even if it did not go into effect until that date.

ARGUMENT.

I.

When the treaty took effect.

This question has been discussed, and the historical facts in connection therewith set forth, in the Government's brief in No. 269, *United States* v. *American Sugar Refining Company*, and further argument is perhaps unnecessary. We desire, however, to refer briefly to certain contentions made by counsel at the argument and in their brief.

It is said that the treaty is a contract, and should be construed so as to carry out the intentions of both the contracting parties. This is undoubtedly the correct principle, but we think its application to the facts of this case is disastrous to the contention of the importer that the treaty took effect retrospectively on April 10, 1903.

Clearly the best evidence of the intention of the parties to a contract is the practical construction which they have mutually put upon it. Now both the United States and Cuba, through their respective Presidents, have put this treaty into effect on the same day, December 27, 1903, to operate prospectively. Several sessions of Congress have come and gone since the proclamation of the President was issued, without a murmur on the part of that body to indicate that it

thought its mandate, contained in the act of December 17, 1903, had been disregarded. The Cuban legislature has been equally quiescent. Both parties to the treaty—the Government of the United States and the Government of Cuba—are apparently perfectly satisfied that the true intent of the treaty has been observed. It is private parties alone, who had nothing to do with the making or enforcement of the treaty, who desire the court to disturb this harmonious condition, by holding that the treaty went into effect in this country either eight months or ten days before it took effect in Cuba. Manifestly the question as to when the treaty should be put into effect was a matter for the determination of the political departments of the Government—in this case Congress and the President—and their action in that regard must, under the well-settled rule, be respected by the courts.

The only ground suggested by the importers in support of their contention that the treaty should be held to have gone into effect on April 10, 1903, is that otherwise the provision that it should continue in force for five years will be impaired. How will that provision be impaired? The language of Article XI is that said convention "shall continue in force for the term of five years from date of going into effect." A change in that date, mutually accepted and agreed upon by both parties, in no wise impairs the provision that it shall continue in force for five years therefrom.

The several stipulations as to the time when the treaty should become operative show beyond all doubt

that it was intended to operate prospectively, and not retrospectively. First, ratifications were to be exchanged on or before January 31, 1903, and the treaty take effect ten days thereafter; then the time for exchanging ratifications was extended until March 31, 1903, the treaty to take effect ten days thereafter; then it was provided that the treaty should not take effect until approved by Congress, and Congress in the act to carry it into execution provided that the President should first ascertain whether Cuba had made provision to give full effect to it, issue his proclamation of fact, and "*thereupon*" the duties were to be reduced. In like manner, as pointed out by this court in the Burr case, Congress in passing the tariff act of 1894 evidenced its intention that that act should operate prospectively by changing from time to time an earlier to a later date when it should go into effect. Besides, in this case there is no ambiguity in the treaty itself. Its language is entirely prospective. The only doubt is suggested by the act of Congress passed to carry into execution the treaty.

It is further contended that the President has no constitutional authority, acting alone, to change a law or treaty. Admitted. But it is his constitutional right and duty to execute both laws and treaties, and that is all he has done in this case. The act of Congress, passed to carry into effect the treaty, had, by reason of the evident mistake of that body as to the exchange of ratifications, complicated the situation, and the President was called upon to place that construction

upon it which would best subserve the real intention of Congress and of the parties to the treaty, in order to prevent the treaty from failing altogether. The action he took was entirely proper for the purpose, and as it has been acquiesced in by all concerned, should be respected by the courts. To hold that the treaty went into effect upon any other date than that fixed by both countries would be to violate its obligations and place this country in a most absurd position.

On page 21 of their brief, counsel for importers, after arguing that it was the intention of the parties to the treaty that it should go into effect on the tenth day after the exchange of ratifications, say:

> Nothing appears in the record disclosing any intention on the part of either of the contracting parties, *certainly not on the part of the Republic of Cuba*, to alter the time of commencement.

In other words, they ask this court to assume, *contrary to the fact*, that the treaty went into effect in Cuba as of April 10, 1903, although it was not put into effect in this country by the President until December 27, 1903.

It is inconceivable that if the Circuit Court for the Southern District of New York had been advised of the fact that the treaty had been put into operation in Cuba on the same date that it went into effect in the United States, it would have held that it went into effect here retroactively as of April 10, 1903. Whether the Circuit Court for the Eastern District of Pennsylvania was wiser on this point does not appear. But

even in the absence of any evidence on the subject, a moment's reflection would have told them that the President would not have put the treaty—a reciprocal arrangement, involving mutual concessions—into effect in this country at a different date from that on which it became operative in Cuba.

Counsel refer to the fact that the exchange of ratifications of the treaty on March 31, 1903, was published at the time in some of the newspapers, as discrediting the suggestion that Congress when it passed the act to carry into effect the treaty might have supposed that such exchange had not occurred. We do not think so. Congress was not in session at that time, and while some of its members might have read of the exchange, it is not improbable that if they did so they had forgotten it when Congress met the next November; and, as shown in our brief in No. 269, the President at that time in no way referred to it in his communications to that body. The fact remains, therefore, that *Congress* was never advised of the exchange of ratifications. We credit the importers and their counsel with the same amount of knowledge that they impute to members of Congress, and yet it appears from their protest in No. 269 (p. 6) that they themselves were ignorant of the fact that ratifications had been exchanged on March 31, 1903, and gathered their information from the terms of the original treaty, for they said in their protest that ratifications had been exchanged, as provided in the treaty, on *January* 31, 1903.

Of course we offer this suggestion merely as a reasonable explanation of the reference in the act to the exchange of ratifications. If no satisfactory explanation can be given therefor, the fact remains, as shown by all the circumstances of the case, that both the treaty and the act were intended to operate prospectively.

II.

The sugars not actually removed from the bonded warehouse until after December 27, 1903, but for which withdrawal entry had been made and permit to deliver issued prior to that date, were properly held to have been withdrawn before the treaty took effect.

Section 20, Customs Administrative Act, as amended by act December 15, 1902 (32 Stat., 753), provides:

> SEC. 20. That any merchandise deposited in any public or private bonded warehouse may be withdrawn for consumption within three years from the date of original importation on payment of the duties and charges to which it may be subject by law at the time of such withdrawal: *Provided, That the same rate of duty shall be collected thereon as may be imposed by law upon like articles of merchandise imported at the time of the withdrawal: And provided further,* That nothing herein shall affect or impair existing provisions of law in regard to the disposal of perishable or explosive articles.

In *Mosle* v. *Bidwell* (130 Fed., 334), the Circuit Court of Appeals for the Second Circuit held that the first proviso, added by the act of December 15, 1902, was simply declaratory of the meaning of the original provision.

In this case the record shows that on or before October 10, 1903, withdrawal entry was made for the 4,524 bags of sugar and 67 bags of sugar sweepings covered by protest 129,306, and that the estimated duties were paid thereon and a delivery permit issued to the storekeeper on the same date. (R., 10, 11, 13, 34–35.)

This was a constructive withdrawal of the goods. The fact that the importer allowed the goods to remain in the warehouse for some time thereafter is immaterial. In no proper sense could they be said to be warehoused, within the meaning of the statute, after being formally withdrawn and a delivery permit issued. The storekeeper then held them, not for the Government, but for the importer, they being at his sole disposition and control. (R., 34, 35.)

This court has held that goods are to be deemed to have been warehoused from the time of the arrival of the ship, because from that time they are in the custody and control of the Government, although not actually deposited in the warehouse until later.

Hartranft v. *Oliver*, 125 U. S., 525.
Seeberger v. *Schweyer*, 153 U. S., 609.

In *Seeberger* v. *Schweyer* the court said (pp. 611–613):

> The case of *Hartranft* v. *Oliver* (125 U. S., 525, 528) is cited as holding that goods in process of transportation, under charge of the customs officers, are in effect already warehoused, within the meaning of the customs laws. That was where the imported article—salad oil—arrived in a vessel at the port of Philadelphia on Saturday, June 30, 1883, and was

entered at the custom-house at 2 o'clock in the afternoon. It was not practicable to remove the goods on that day, and the next day was Sunday. On July 7 the cases were entered in bond at the custom-house, and on the same day the importer made a withdrawal entry for the goods, and offered to pay the collector duty thereon at the rate of 25 per cent ad valorem, but the collector exacted a specific duty of 25 cents per gallon, a change of rate of duty having gone into effect on July 1, and the court held, per Mr. Justice Field, that "goods on board a ship, in charge of a custom-house officer, preliminary to their removal to a public store or a bonded warehouse, and during the time necessary for that purpose, are in like custody, and so are within the spirit and intent of the law, subject only to such duties as are leviable when the goods are freed from such custody. So far as the Government is concerned, they are in the same position as if technically in a public store or bonded warehouse. *When in either of these places, they can not be removed without a permit from the collector.* When on shipboard, in charge of a custom-house inspector, they are in the same condition, and can not be removed without a like permit. * * * The act of Congress of March 28, 1854, which is now embraced in section 2971 of the Revised Statutes, in providing for the deposit of goods in public stores and bonded warehouses, declares that "any goods remaining in public store or bonded warehouse beyond three years shall be regarded as abandoned to the Govern-

ment;" and in the construction of this clause the Treasury Department has decided that the period limited for their remaining in a public store or a bonded warehouse includes the time on shipboard after the arrival of the ship in port. (Treasury Regulations of 1857, art. 483.)

If, then, goods remaining on a vessel after arrival at the port of New York, and when the vessel is in charge of a custom-house officer, are to be regarded, within the customs laws, as within the custody of the Government in the same sense as if they had been actually discharged into a custom-house or bonded warehouse, it would seem to follow that when goods have arrived at the port of New York, and the arrival of the vessel has been reported at the custom-house, and then the goods, with the consent and allowance of the collector, under the provisions of the first and second sections of the act of June 10, 1880, have been shipped to Chicago, such goods must be deemed to have been warehoused from the time of the arrival of the ship.

In *Hartranft* v. *Oliver*, the court also said (p. 528):

> There is manifest justice in the rule that goods thus withheld from the control of the owner or importer shall be subject only to such duties as are leviable by law *when he is at liberty to take possession of them.*

The previous statement in that opinion that "when in either of these places [a public store or bonded warehouse] they can not be removed without a permit from the collector," shows conclusively that the

court considered the importer's right to take possession of the goods as accruing at the time of the issuance of a permit, and that the goods should be subject only to such duties as were leviable *at that time.*

If, as held in the above cases, the period of warehousing begins from the time of importation, because the goods from that time are in the custody and control of the Government, it follows logically that the period of warehousing must be held to end when the withdrawal entry is made and a permit to deliver issued, because they then cease to be in the custody and control of the Government, the possession of the storekeeper being possession for the importer and the goods being then subject to the latter's absolute control.

The court in the cases cited went further than the necessities of this case require. It would have been sufficient for the purposes of this case if it had merely held (as it undoubtedly would have done, since the greater includes the less) that goods were to be considered as warehoused from the time entry for warehousing was made, although not actually deposited in the warehouse until later.

The fact that the Government has adopted an extremely liberal rule in the case of goods destroyed by accidental fire or other casualty is immaterial. (Treas. Decs., 1653 and 22,847.) Meritorious circumstances exist in such a case that are not here present. Whether the rule so adopted is correct, it is unnecessary to decide. But it appears from the later decision that

beyond checking off the goods the inspectors have nothing to do after the issuance of the delivery permit. Moreover the goods there referred to were not warehoused, but were entered for consumption and were burned upon the wharf before removal could be expected, no negligence being imputable to the importer.

It is manifest that the only practical rule to adopt is that goods must be considered as withdrawn when a permit to deliver is issued. Some definite time must be fixed upon in order that the duties may be properly estimated. As soon as withdrawal entry is made a permit to deliver is issued if the estimated duties as then ascertained are paid. (R. 34.) When that is done, the act of withdrawal has, in the eye of the law, been consummated. Removal of the goods follows later and is a separate and independent act, with which the collector is not concerned, as he has already estimated the duties according to the rate in force when the permit to deliver is issued, and such duties have been paid.

This rule was adopted by the Treasury Department from the first in applying the Cuban treaty:

> Products of Cuba previously imported *for which no permit to deliver has been issued* are subject to provisions of Cuban reciprocity treaty if entered or withdrawn after midnight of December 26, 1903.
>
> Treasury Decision 24,855, December 29, 1903.
>
> Treasury Decision 29,924, January 20, 1904.

III.

As to the effect of liquidation after the treaty became operative.

To hold that because liquidation occurred after the treaty became operative entitled the goods to the benefit of its terms would be to make the date of liquidation and not the date of withdrawal the determining factor, contrary to section 20 of the Customs Administrative Act, as amended.

The law does not prescribe the time in which liquidation shall be made; the only limitation upon the action of the collector being that, after once liquidating, he may not, in the absence of fraud or protest, reliquidate after a year from the date of entry—act of June 22, 1874, chapter 391, section 21. (*Abner Doble Co.* v. *United States*, 119 Fed., 152; *United States* v. *De Rivera*, 73 Fed., 679; *Gandolfi* v. *United States*, 74 Fed., 549.) In *Merritt* v. *Cameron* (137 U. S., 542, 549–551), this court held that liquidation need not necessarily be postponed until the date of final withdrawal, but "should follow, in the regular course of business, as soon after the entry as is *convenient*, just as in the case of merchandise entered for immediate consumption.

The date of liquidation is important only in its bearing upon the time for making protest and reliquidation.

There is no provision in the treaty with Cuba, or the act of Congress in execution of it, requiring the liquidation or reliquidation of goods previously entered in accordance with its terms. This shows that the treaty and act were not intended to be retroactive in

any respect. In the Burr case, referring to the effect of liquidation of previously entered goods subsequent to the tariff act of August 28, 1894, the court said (159 U. S., 83–84):

> The duties under consideration were paid August 8, and the merchandise delivered on August 11, but it was not until August 28 that the fact was stamped on the entry that the goods were liquidated as entered. There was no change in the classification, and no additional duty was demanded or collected, and the payment made at the time of entering the merchandise for consumption was the payment of duties. (*Barney* v. *Rickard*, 157 U. S. 352.) The original assessment of duty was right, and the final liquidation was the same, and there was no specific provision in the act of 1894 requiring a liquidation at the rates under that act. How, then, can it be held that the act of October 1, 1890, was intended to be repealed by retroaction?

It thus appears that the estimated duties paid at the time of withdrawal are *the* duties.

The judgment of the Circuit Court should be affirmed.

Respectfully submitted.

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Special Assistant to the Attorney-General.

O

Supreme Court of the United States.

No. 652.—October Term, 1905.

Franklin Sugar Refining Company, Appellant, vs. United States. } Appeal from the Circuit Court of the United States for the ~~Southern~~ Eastern District of ~~New York~~ Pennsylvania

[May 28, 1906.]

Mr. Justice McKenna delivered the opinion of the Court.

This case was argued and submitted with No. 269.

The appellant imported and entered at the port of Philadelphia on September 29, 1903, certain sugars, the product of the Republic of Cuba. The collector imposed on all the sugars the full rate imposed by the tariff act of July 24, 1897. Permits for the removal of all the sugars for consumption from bonded warehouses were issued to appellant before December 17, 1903, and all removed for consumption before that date except 1,250 bags, which were removed December 28, and 3,279 bags and 67 bags of sweepings on December 29.

It is contended (1) that all of the sugars having been imported after the exchange of ratifications of the treaty between the United States and Cuba, appellant was entitled to the reduction of 20% of the rates of duty imposed by the act of July 24, 1897; (2) that appellant was entitled in any event to such reduction as to the sugar not actually removed from bonded warehouse until after December 27, 1903. The board of appraisers sustained the collector and the Circuit Court affirmed the order of the board.

As to the first contention, this case is exactly like that of *United States* v. *American Sugar Refining Company*, just decided. We decided that under the treaty between the United States and Cuba and the act of Congress approved December 17, 1903, there quoted, imports from Cuba were not entitled to the reduction of the duties imposed by the act of July 24, 1897, until December 27, 1903, the date proclaimed by the President of the United States and the President of Cuba for the commencement of the operation of the treaty.

The answer to the second contention depends upon section 20 of the customs administrative act, as amended by the act of December 15, 1902. (32 Stat. 953.) Section 20 provides as follows:

"That any merchandise deposited in any public or private bonded warehouse may be withdrawn for consumption within three years from the date of the original importation on payment of the duties and charges to

which it may be subject by law at the time of such withdrawal: *Provided*, That the same rate of duty shall be collected thereon as may be imposed by law upon like articles of merchandise imported at the time of the withdrawal: *And provided further*, That nothing herein can affect or impair existing provisions of law in regard to the disposal of perishable or explosive articles."

The section needs no interpretation. It is clear that it subjects merchandise to the duties prescribed by law at the time it is withdrawn for consumption. (*Mosle* v. *Bidwell*, 130 Fed. Rep. 334.) And our inquiry then must be, when were the sugars in controversy withdrawn for consumption? If before December 27, 1903, they were dutiable under the act of July, 1897; if after December 27, they were entitled to 20% reduction of the duties prescribed by that act.

Between September 29 and October 10 withdrawal entries were made of the entire cargo and duties at regular rates paid thereon. The delivery permits were lodged with the storekeeper at the same time. This put the sugars at the absolute disposition of the importers. It may be that the Government had the custody of them, or rather the joint custody with the importer. (Section 2960, R. S.) But it was a mere manual custody, not claiming any right over them or right to detain them. Indeed it may be said that the payment of duties and the delivery of the permit to the storekeeper operated to give up the custody which the Government had jointly with the importer before the payment of duties. It is, however, pointed out by appellant that by section 2977, R. S., merchandise upon which duty has been paid may remain in the warehouse, "in the custody of the officer of customs, at the expense and risk of owners of such merchandise, and if exported directly from such custody to a foreign country, within three years, shall be entitled to a return duty." Whether this section covers a case where a permit has been issued it is not necessary to decide. It is enough to say that the section is part of the plan for the payment of drawbacks. The merchandise is identified by remaining in the warehouse. (Section 2978, R. S.) We think, therefore, that where duties are paid upon merchandise and permits issued for its removal which have been delivered to the storekeeper, it is withdrawn for consumption and is subject to duties as of that time.

A contention is made based on the date of ultimate liquidation of duties, which was not until after December, 1903. In case No. 269 the effect of liquidation was apparently urged to be to entitle the importer to the benefit of the treaty, which it was contended went into operation April 10, 1903, although the act giving the treaty effect was not passed until after the importation of the sugars. In other words, it was said "before the duties had been liquidated; so much of the statute as imposed more than eighty per cent of the regular duties upon these imports was repealed, and

the repeal by its very terms took effect as of a date prior to the date of the importation." It was not necessary in No. 269 to notice the contention, as we decided the treaty did not go into effect until 27th December, 1903. In the case at bar the date of final liquidation is seemingly given greater force. It is contended that "there was no liquidation until after the convention was concededly in effect," and was therefore "required to be made in accordance with the tariff act as then in force." In other words, whether the treaty went into effect in April or in December was unimportant, being in effect under the act of Congress when liquidation was made it determined the rate of duty. The proposition, if true, is decisive and makes all others in the case valueless. Appellant submits the proposition without other argument than its statement, and we may, therefore, reply to it briefly. It is plainly in contradiction of section 20 of the customs administrative act as amended. That section subjects merchandise to the rate of duty in force at the time of withdrawal for consumption, not the rate in force at the time of liquidation. See *United States* v. *Burr*, (159 U. S. 83, 84.)

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.